Nos. 16-74, 16-86 & 16-258

IN THE

Supreme Court of the United States

ADVOCATE HEALTH CARE NETWORK, ET AL., *Petitioners*,

v.

MARIA STAPLETON, ET AL., *Respondents*.

SAINT PETER'S HEALTHCARE SYSTEM, ET AL., *Petitioners*,

v.

LAURENCE KAPLAN, *Respondent*.

DIGNITY HEALTH, ET AL., *Petitioners*,

v.

STARLA ROLLINS, *Respondent*.

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SUPREME COURT, U.S.

On Writs of Certiorari to the Third, Seventh, and Ninth Circuits

JOINT APPENDIX VOLUME I OF II

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CERTIORARI GRANTED IN ALL CASES DECEMBER 2, 2016

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

No. 1:14-cv-1873

STAPLETON ET AL.

v.

ADVOCATE HEALTH CARE NETWORK ET AL.,

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
03/17/2014	1	COMPLAINT filed by Maria Stapleton, Antoine Fox, Sharon Roberts, Judith Lukas; Jury Demand. Filing fee $ 400, receipt number 0752-9298875.
12/31/2014	64	MEMORANDUM Opinion and Order signed by the Honorable Edmond E. Chang on 12/31/2014: For the reasons stated in the Opinion, the defense motion to dismiss 34 is denied. The status hearing of 02/17/2015 is accelerated to 01/08/2015 at 09:00 AM. Emailed notice(Chang, Edmond) (Entered: 12/31/2014)
01/21/2015	76	ORDER Signed by the Honorable Edmond E. Chang on 1/21/2015: For the reasons states in the Order, the

DATE	NO.	DOCKET TEXT
		motion to certify 28 U.S.C. 1292(b) interlocutory appeal 69 is granted. The motion to stay is granted, with the possible exception of requiring an answer to the complaint, see R. 72, 75. The parties are briefing that potential limited exception to a stay. Emailed notice(Chang, Edmond) (Entered: 01/21/2015)
02/02/2015	85	ORDER signed by the Honorable Edmond E. Chang on 2/2/2015: For the reasons stated in the Order, Plaintiffs' motion to clarify 77 the 28 U.S.C. 1292(b) order is granted, as stated in this Order. The interlocutory appeal remains certified. Emailed notice(Chang, Edmond) (Entered: 02/02/2015)
02/18/2015	89	NOTICE of appeal by Advocate Health Care Network regarding orders 64 .
02/25/2015	93	ACKNOWLEDGMENT of receipt of short record on appeal regarding notice of appeal 89 ; USCA Case No. 151368.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 15-1368

STAPLETON ET AL.

v.

ADVOCATE HEALTH CARE NETWORK ET AL.,

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
02/25/2015	1	Private civil case docketed. Fee paid. Docketing Statement due for Appellants Advocate Health Care Network, Benefit Plan Administrative Committee for the Church Plans of Advocate Health Care Network, Kevin R. Brady and Compensation and Benefits Committee of the Board of Directors of Advocate Health Care Network by 02/25/2015. Transcript information sheet due by 03/11/2015. Appellant's brief due on or before 04/06/2015 for Advocate Health Care Network, Benefit Plan Administrative Committee for the Church Plans of Advocate Health Care Network, Kevin R. Brady and Compensation and Benefits Committee of the Board of Directors of Advocate Health Care Network.

DATE	NO.	DOCKET TEXT
04/06/2015	9	Appellant's brief filed by Appellants Advocate Health Care Network, Benefit Plan Administrative Committee for the Church Plans of Advocate Health Care Network, Kevin R. Brady and Compensation and Benefits Committee of the Board of Directors of Advocate Health Care Network.
05/06/2015	30	Appellee's brief filed by Appellees Antoine Fox, Judith Lukas, Sharon Roberts and Maria Stapleton.
05/20/2015	45	Appellant's reply brief filed by Appellants Advocate Health Care Network, Benefit Plan Administrative Committee for the Church Plans of Advocate Health Care Network, Kevin R. Brady and Compensation and Benefits Committee of the Board of Directors of Advocate Health Care Network.
09/18/2015	53	Case heard and taken under advisement by panel: William J. Bauer, Circuit Judge; Michael S. Kanne, Circuit Judge and Ilana Diamond Rovner, Circuit Judge.
03/17/2016	61	Filed opinion of the court by Judge Rovner. AFFIRMED. William J. Bauer, Circuit Judge; Michael S. Kanne, Circuit Judge, concurring, and Ilana Diamond Rovner, Circuit Judge.

DATE	NO.	DOCKET TEXT
03/17/2016	62	ORDER: Final judgment filed per opinion. With costs: yes.
04/26/2016	68	ORDER re: 1) Appellants' Motion to Stay the Mandate Pending the Filing and Disposition of a Petition for a Writ of Certiorari. [63] 2) Plaintiffs-Appellees' Response to Appellants' Motion to Stay the Mandate Pending the Filing and Disposition of a Petition for a Writ of Certiorari. 3) Appellants' Reply in Further Support of Their Motion to Stay the Mandate Pending the Filing and Disposition of a Petition for a Writ of Certiorari. The motion is GRANTED. The mandate of this court is STAYED until the expiration of the time allowed for filing a petition for writ of certiorari. If a timely petition is filed and appellants notify this court in writing, this stay shall remain in force until the conclusion of all proceedings before the Supreme Court of the United States See Fed. R. App. P. 41(d)(2).

BYLAWS
OF
ADVOCATE HEALTH CARE NETWORK

ARTICLE I
Purposes

Section 1.1. *Purposes.* The Corporation is organized exclusively for religious, charitable, educational and scientific purposes, including:

(a) to promote, support, benefit, develop and perform the functions of Advocate Health and Hospitals Corporation, its successor(s) and other organizations described in sections 509(a)(1) or 509(a)(2) of the Internal Revenue Code of 1986, as amended (the "Code") (such corporations, their successors and other organizations are collectively referred to herein as the "Organizations"), by operating and providing leadership, control and support in the provision of a high quality, comprehensive, coordinated health delivery system for the benefit of such Organizations;

(b) to operate and provide leadership, control and support of the provision of services to the public through programs for the charitable, religious, educational and scientific needs of the community which accomplish the purposes of the Organizations;

(c) to support and benefit the Organizations through community development and other activities for the general benefit of the community and through financial and other resource control coordination consistent with the purposes of the Organizations; and

(d) to sponsor, develop, promote and encourage public participation in public services and programs that are charitable, religious, educational or scientific.

The Corporation shall not engage in the practice of medicine.

Section 1.2. *Restrictions on Corporate Activities.* No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, to make indemnity payments as authorized in Article VI of these Bylaws and to make payments and distributions in furtherance of the purposes set forth above. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted pursuant to an election made under section 501(h) of the Code), and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office. Notwithstanding any provisions of the Articles of Incorporation to the contrary, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Code (or the corresponding provision of a future United States Internal Revenue Law).

ARTICLE II
Members

The Corporation has no Members.

ARTICLE III
Board of Directors

Section 3.1. *Powers.* The business of the Corporation shall be managed by the Board of Directors. The Board of Directors shall, in addition to managing the business of the Corporation, authorize and prescribe such rules and regulations or standards for management as it deems appropriate and which are not in conflict with these Bylaws.

Section 3.2. *Number, Composition, Election and Terms.*

(a) The Board of Directors shall have not more than twenty two voting members as indicated below:

(i) No less than two UCC Directors, one of which shall include the Illinois Conference Minister of the United Church of Christ (hereinafter "Conference Minister") as an ex-officio Director;

(ii) No less than two ELCA Directors, one of which shall include the Bishop of the Metropolitan Chicago Synod of the Evangelical Lutheran Church in America (hereinafter "Synod Bishop") as an ex-officio Director;

(iii) the President, as an ex-officio Director;

(iv) a physician representative of Advocate Physician Partners;

(v) the Chairperson of the Board of Directors of Advocate Charitable Foundation as an ex-officio Director. If the Chairperson of Advocate Charitable Foundation is unable to serve, a designee of the Chairperson of Advocate Charitable Foundation (currently serving on the Board of Directors of Advocate Charitable

Foundation), may serve in his or her place, provided, however, that the appointment shall require approval by the Nominating Committee and the Board of Directors;

(vi) "at large" Directors.

Notwithstanding the above, the Board of Directors may be reduced to not less than fifteen voting members provided that the ratio of UCC Directors to ELCA Directors shall be equal and conforms to Article 3.2 (b) below.

(b) The number of UCC and ELCA Directors shall be equal. Every effort will be made to maintain equal representation, recognizing that from time to time vacancies will occur and variances will be corrected in a timely manner.

(c) Group A. The elected UCC Directors shall be pastors or lay members of UCC Congregations that are in good standing in the Chicago Metropolitan Association, the Fox Valley Association, the Eastern Association or the Prairie Association. Such individuals may be physicians. With the consent of the Illinois Conference Minister of the United Church of Christ, one ecumenical representative, who is endorsed by the church body where he or she holds membership, may be elected as a Group A Director.

(d) Group B. The elected ELCA Directors shall be active clergy or lay members of the ELCA. Such individuals may be physicians. With the consent of the Bishop of the Metropolitan Chicago Synod, one ecumenical representative, who is endorsed by the church body where he or she holds membership, may be elected as a Group B Director.

(e) Group C. The "at large" Directors shall be individuals who are not required to be affiliated with the UCC or ELCA.

(f) With the consent of the Illinois Conference Minister of the United Church of Christ and the Bishop of the Metropolitan Chicago Synod, an ex-officio director who is affiliated with the UCC or ELCA may be counted as a Group A or Group B director, respectively.

(g) Terms. Each group of UCC, ELCA and at large Directors shall have as nearly as possible the same number of members and shall be designated Group A, Group B and Group C, respectively. The Directors chosen to succeed those whose terms then expire shall be identified as being the same Class and Group as the Directors they succeed and shall be elected for a term expiring at the third succeeding annual meeting of the Board or thereafter when their respective successors in each case are elected and qualified. Barring death or resignation, each Director shall hold office for a term for which he or she is elected or until his or her successor shall have been elected and qualified. No Director (other than the President of the Corporation, the Illinois Conference Minister of the United Church of Christ, the Synod Bishop, and the Chairperson of Advocate Charitable Foundation (or a designee of the Chairperson of Advocate Charitable Foundation (currently serving on the Board of Directors of Advocate Charitable Foundation), if the Chairperson is unable to serve), who shall serve as ex-officio members of the Board) may serve more than three full three-year terms consecutively. A full term shall consist of more than nineteen months of service on the Board; any service provided by a Director for less than nineteen months shall not qualify as a full term.

Section 3.3. *Election.*

(a) All Directors, except the President and those serving in an ex-officio capacity, shall be elected by the Board of Directors of the Corporation to fill open positions at the annual meeting of the Board, provided, however, that if a designee of the Chairperson of Advocate Charitable Foundation (who is currently serving on the Board of Directors of Advocate Charitable Foundation) is nominated for appointment to the Board by the Nominating Committee, the election shall require approval by the Board of Directors. Candidates shall be submitted by the Nominating Committee to the Board for its consideration and election.

(b) A physician representative from Advocate Physician Partners shall be elected by the Board at the annual meeting of the Corporation and may serve three consecutive one-year terms.

Section 3.4 *Resignation.* Any Director may resign at any time by filing a written resignation with the Secretary. Any such resignation shall be effective upon receipt, unless a later date is specified therein, and need not be accepted in order to be effective. The Secretary shall notify the Chairperson of the Nominating Committee of the receipt of any such resignation and its effective date.

Section 3.5 *Removal.*

Any Director (other than the President, the Synod Bishop or Conference Minister) may be removed by the affirmative vote of two-thirds of the Directors who were present and voted, at any Board meeting following appropriate notice, taking into account, but not limited to the following criteria:

- Failure of a pastor or lay UCC Director to maintain eligibility for the position, in accordance with Section 3.2(c);
- Failure of an active clergy or lay ELCA director to maintain eligibility for the position, in accordance with Section 3.2(d);
- Failure of a Director to meet the attendance requirements provided for in Section 3.15 of the Bylaws;
- Inappropriate disclosure of confidential information;
- Conviction of a felony;
- Conduct, either within or outside the Corporation, which is or reasonably appears to be potentially dangerous to the Corporation or which violates established principles associated with a Director position;
- Fraudulent, disruptive or dishonest conduct, gross abuse of the Director position to the detriment of the Corporation, or any other circumstances in which action must be taken immediately in the best interest of the Corporation.

Section 3.6. *Vacancies.* Any vacancy in an elected Director position shall be filled by the Board of Directors from a nominee submitted by the Nominating Committee in accordance with Section 4.9 of these Bylaws. Any Director so elected shall serve for the balance of the unexpired term of his or her predecessor in office.

Section 3.7. *Annual Meetings.* The Board of Directors shall meet and organize itself at the annual meeting of the Corporation.

Section 3.8. *Regular Meetings.* Regular meetings of the Board of Directors shall be held as designated by the Board of Directors.

Section 3.9. *Special Meetings.* Special meetings of the Board of Directors may be called at any date by the President as the need for such special meetings may appear as necessary, and must be called by the President or the Secretary within ten days of the receipt of a written request signed by three or more Directors.

Section 3.10. *Place of Meetings.* The place of all meetings of the Board of Directors shall be at the Corporation's general office unless otherwise specified in the notice of the meeting.

Section 3.11. *Notice.*

(a) Written notice of each regular or special meeting of the Board of Directors, including the date, time and place of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not later than the second day preceding the meeting and not earlier than the twenty-first day before the proposed meeting. Notice shall be deemed given upon delivery, either personally, by mail, overnight delivery, email or facsimile transmission, *provided* that, if given by mail, notice shall be deemed timely even if not delivered by the second day preceding the meeting if deposited in the United States mail addressed and postpaid to the address of each Director as shown by the records of the Corporation, not later than the fifth day before the proposed meeting. No special meeting to remove a Director may be held without written notice of the proposed removal being delivered to all Directors at least twenty days prior to such meeting.

(b) *Waiver of Notice.* Whenever any notice is required to be given under the provisions of the Act or under the provisions of the Articles of Incorporation of the Corporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting except where a Director, as the case may be, attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and so informs the Secretary and presiding officer at the meeting.

Section 3.12. *Quorum.* A majority of the Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, *provided* that at least one UCC Director and one ELCA Director are present, and *provided further,* that if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting to another time without further notice.

Section 3.13. *Manner of Acting.* Except as provided in Section 3.14 of these Bylaws or as otherwise provided by law or the Articles of Incorporation of the Corporation, the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, provided that at least one UCC Director and one ELCA Director vote with the majority of those Directors present at the meeting; provided, further, that with respect to any sale of all or substantially all of the assets of the Corporation, merger or consolidation of the Corporation into or with any corporation that is not,

immediately prior to such merger or consolidation, controlled by, controlled with or controlling the Corporation, such action must be further approved by no less than two UCC Directors then in office and no less than two ELCA Directors then in office. Any changes to the composition of the Nominating Committee shall require approval by the Illinois Conference Minister of the United Church of Christ and the Bishop of the Chicago Metropolitan Synod prior to ratification by no less than two UCC Directors and no less than two ELCA Directors then in office.

Section 3.14 *Resolution of Deadlock.* In the event that a vote of the Board of Directors results in an equal number of votes for and against a proposed action and at least one Director believes that the action requires a definitive affirmative or negative vote, then the matter shall be referred to the Executive Committee for further discussion and resolution. The Executive Committee shall meet and discuss the proposed action with a view to resolving it or reaching a compromise position. If the Executive Committee reaches a decision with respect to the proposed action, then such decision shall be presented to the Board of Directors for their consideration and approval. If after a reasonable period of time, the Executive Committee is unable to reach any result, then it shall discontinue its efforts and the deadlock shall stand.

Section 3.15. *Requirements.* Inasmuch as attendance at meetings of the Board of Directors and participation in the work of its committees are important to the discharge of a Director's responsibilities, if a Director (in the absence of extenuating circumstances appropriately indicated to the Secretary of the Corporation) is absent from three consecutive Board meetings or is absent from three consecutive meetings of any

committee of which he or she is a member, then such Director shall be presumed to have resigned as a Director. Any Board member (other than the President of the Corporation, the Synod Bishop or the Conference Minister) who shall be absent from more than fifty percent of the meetings of the Board of Directors or any Board committee, whether excused or unexcused, during any year between the annual meetings of the Corporation, except by special leave of the Board of Directors before the totality of such absences has occurred, shall be subject to removal by the Board of Directors of the Corporation.

Section 3.16. *Compensation.* A Director (other than the President of the Corporation) shall not receive any stated salaries for their services as such. The Board of Directors may, by resolution of the Board, reimburse Directors for their expenses of attendance, if any, at each regular or special meeting of the Board. Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving reasonable compensation therefore.

ARTICLE IV
Committees of the Board

Section 4.1. *Standing, AD HOC or Special Committees.* The Chairperson and the President, acting jointly and subject to review by the Executive Committee and ratification by the Board of Directors, shall appoint:

(a) standing Board committees consisting of an Executive Committee, Compensation and Benefits Committee, a Finance Committee, a Planning Committee, a Nominating Committee, an Audit Committee, a Mission and Spiritual Care Committee and a Health

Outcomes Committee. All committees of the Board except the Executive, Compensation and Benefits, Audit and Nominating Committees may include persons who are not Directors.

(b) such other standing, ad hoc, or advisory boards, or committees as shall be deemed advisable and appropriate;

(c) special committees may be appointed for a limited period for a limited purpose and may be dissolved by the Board of Directors at any time by a majority vote of the Directors.

(d) In addition, one physician from Advocate Physician Partners ("APP") shall be appointed to each of the following committees: Finance, Planning, and Health Outcomes, subject to ratification by the Board of Directors. No physician representative from APP shall be appointed to more than one committee at a time.

Section 4.2. *Selection of Chairpersons; Term of Office of Committee Members.*

(a) The Chairperson and the President, acting jointly, and subject to review by the Executive Committee and ratification by the Board of Directors, shall appoint the chairpersons of standing, ad hoc or special committees; *provided, however,* that the chairperson of the Executive Committee and the Compensation and Benefits Committee shall be the Chairperson of the Board. All chairpersons of committees shall be Directors. Each committee Chair shall serve for a term of two years and may serve a maximum of two terms.

(b) Each member of a committee shall serve for a one-year term or until a successor has been appointed, unless otherwise removed, or unless the committee, ad

hoc or special, shall have been dissolved, provided, however, that the members of the Mission and Spiritual Care Committee shall serve for a term of two years, for a maximum of two terms. The Chairperson and the President, acting jointly and subject to review by the Executive Committee and ratification by the Board of Directors, may change the members of the committees.

Section 4.3. *Meetings and Quorum; Acts.* The chairperson of each committee shall call meetings of the committee at such times as may be required for the prompt and thorough consideration of the matters falling within the purposes for which that committee is established, or as otherwise stated herein. A majority of a whole committee shall constitute a quorum and the act of the majority of the members present at the meeting at which a quorum is present shall be the act of the committee. Each committee may adopt rules for its own governance not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

Section 4.4. *Executive Committee.* The Executive Committee shall:

(a) nominate candidates for election as the Chairperson and Vice Chairperson of the Board;

(b) be responsible for planning educational programs for the Board of Directors;

(c) conduct an evaluation of the members of the Board of Directors;

(d) have such authority as shall be delegated by the Board of Directors; and

(e) act on behalf of the Board of Directors between meetings.

The Executive Committee shall be accountable as a body to the Board of Directors. The Executive Committee shall have no less than six members, consisting of the Chairperson, the Vice Chairperson, the President and the Chairpersons of the Finance, Planning, Health Outcomes and Mission and Spiritual. Care Committees. The Past Chairperson of the Board of Directors may serve as an ex-officio member of the Committee, with vote. The Chairperson of the Board of Directors shall serve as Chairperson of the Executive Committee.

Section 4.5. *Compensation and Benefits Committee.* The Compensation and Benefits Committee shall be responsible for the independent oversight of all compensation programs of Advocate Health Care Network ("the Corporation") and its various entities and ventures. The Committee is empowered by the Board of Directors to oversee all aspects of the various compensation programs of the Corporation, specifically the following:

(a) Annual review of the total compensation strategies for the various employee populations of the Corporation and approve or modify them;

(b) Annual review of all aspects of the executive compensation programs and approval of their continuation or modification;

(c) Annual approval of both the annual and long term goals for the annual and long term incentive plans;

(d) Annual approval of executive salary structure adjustments;

(e) Review executive benefit programs as necessary;

(f) Annual review of the actual results achieved for the goals of the annual incentive plan and the concluding three-year cycle of the long term plan and determine the appropriate payouts if such have been earned;

(g) Annual review of the performance of the CEO, determine the CEO's compensation and the Performance Modifier for the incentive plans;

(h) Select and hire an independent compensation advisor to advise and work with the Committee;

(i) Review and approve any changes or modifications to the compensation, benefits and retirement programs and plans;

(j) Review and approve the annual 990 submission;

(k) Annually, engage in an educational session on current issues in health care compensation and benefits practice, regulations, trends and new issues;

(l) Request special studies, analysis and reports from Management or an independent consultant to help with decision-making, review and evaluation of the programs, practices and any proposed modifications;

(m) Annual review with Management of the implementation of the various compensation and benefit programs to assure that they are being implemented in practice as designed in concept;

(n) Annual review of the Committee's own functioning to determine if it is functioning effectively.

The Committee shall be composed of no less than four members consisting of the current Chairperson, Vice Chairperson and Immediate Past Chairperson

of the Corporation's Board of Directors (who shall serve as ex-officio members) and no less than one independent director, provided, however, that if the immediate past Chairperson of the Board is unable to serve on the Committee due to the expiration of his or her director terms, then an independent director shall be appointed in his or her place.

Section 4.6. *Finance Committee.* The Finance Committee shall, with respect to the Corporation, its subsidiaries and any corporation of which the Corporation is the sole member:

(a) advise the Board of Directors and its committees on the objectives, policies and controls relative to the financial operation of such entities;

(b) review and recommend to the Board of Directors operating and capital budgets and fiscal policies for such entities;

(c) review and approve budgeting processes for such entities;

(d) consolidate the budgets of such entities; and

(e) monitor and evaluate the financial performance of such entities.

The Finance Committee shall have no less than five members, consisting of no less than three Directors (who shall include the President or the President's designee) and no less than two non-Directors (one of which shall be a physician from Advocate Physician Partners and one active UCC or ELCA clergy). The chairperson of the committee may invite additional management members to attend committee meetings. Recommendations of the committee shall be presented

to either the Board of Directors or the Executive Committee.

Section 4.7. *Planning Committee.* The Planning Committee shall, with respect to the Corporation, its subsidiaries and any corporation of which the Corporation is the sole member,

(a) approve system-wide planning processes and guidelines for such entities; and

(b) approve strategic plans and directions for such entities.

The Planning Committee shall have no less than five members, including no less than three Directors (who shall include the President or the President's designee) and no less than two non-Directors (one of which shall be a physician from Advocate Physician Partners and one active UCC or ELCA clergy). Recommendations of the committee shall be presented to either the Board of Directors or the Executive Committee.

Section 4.8. *Mission and Spiritual Care Committee.* The Mission and Spiritual Care Committee shall review and make recommendations on matters pertaining to Advocate's UCC and ELCA relationships, community benefit, ethics, Advocate Experience and clinical pastoral education. The Mission and Spiritual Care Committee shall have no less than fourteen members, consisting of no less than two Directors (who shall include the President or the President's designee), no less than five UCC lay or clergy, no less than five ELCA lay or clergy, and no less than two members from the larger faith community. Recommendations of the committee shall be presented to either the Board of Directors or the Executive Committee.

Section 4.9. *Nominating Committee.* The Nominating Committee shall review candidates to fill director positions on the Board of Directors of the Corporation, and the ELCA and UCC Clergy and Lay Representative positions on the Governing Councils of Advocate Health and Hospitals Corporation, Advocate North Side Health Network and Advocate Condell Medical Center. Nominations from the committee shall be submitted to the Board of Directors for approval.

The Nominating Committee shall consist of at least seven (7) Directors including the President of the Corporation, the Chairperson of the Board of Directors, the Synod Bishop (or a Director designated by the Bishop), the Conference Minister (or a Director designated by the Minister), plus one UCC Director, one ELCA Director and one other Director. To the extent possible, each candidate shall, in addition to any other criteria that the committee may develop, meet the following criteria:

(a) support the mission, values and philosophy of the Corporation;

(b) agree to provide leadership, control and support of a quality, comprehensive, coordinated and integrated health delivery system;

(c) be experienced in board membership or leadership of other organizations;

(d) demonstrate leadership in business and/or community affairs;

(e) reflects the diversity of the communities that the corporation serves; and

(f) agrees to embrace and advance the corporation's philosophy of Continuous Quality Improvement.

Section 4.10. *Health Outcomes Committee.* The Health Outcomes Committee shall, with respect to the Corporation, its subsidiaries and any corporation of which the Corporation is the sole member:

(a) advise the Board of Directors with respect to the activities of such entities that are designed to monitor and improve the quality of care;

(b) review and report, and in some cases make recommendations to the Board of Directors of such entities on credentialing, quality of care, and quality monitoring and improvement (including, without limitation: quality assurance and assessment plans; key policies relating to quality; key performance indicators and criteria; policies relating to medical and clinical ethics; medical staff credentialing, competency of other individuals who provide patient services, and medical staff by-laws amendments for hospitals affiliated with the Corporation; and medical staff relations and development, including medical staff development plans, for hospitals affiliated with the Corporation); and

(c) monitor and provide periodic updates to the Boards of Directors of such entities regarding external accreditation standards and reports and licensure activities, quality reports, education and clinical research activities, professional liability claims, risk management reports and safety reports.

The Health Outcomes Committee shall have no less than eight members, consisting of no less than two Directors, no less than three physicians (one of whom shall be a physician from Advocate Physician Partners), no less than one nurse executive from Advocate's Patient Care Council, no less than one active UCC or ELCA clergy and no less than one outside quality expert. The Health Outcomes Committee may also

designate other staff of the Corporation and affiliated and subsidiary corporations to be present by invitation to express their views but without vote.

Section 4.11. *Audit Committee.* The Audit Committee shall, with respect to the Corporation, its subsidiaries and any corporations of which the Corporation is the sole member:

(a) monitor all financial and non-financial operations of such entities;

(b) recommend an independent accounting firm to audit the accounts of such entities; and

(c) review the work of such accounting firm.

The Audit Committee shall have at least three members who shall be independent Directors. Recommendations of the committee shall be presented to either the Board of Directors or the Executive Committee.

ARTICLE V
Governing Councils

The Governing Council of each hospital owned and operated by Advocate Health and Hospitals Corporation ("AHHC"), Advocate North Side Health Network ("North Side"), Advocate Condell Medical Center ("Condell") and any that become fully merged therein, shall be composed in a manner determined by the Executive Committee. The following Governing Council positions, if applicable per the Governing Council Responsibility Policy, shall be subject to nomination by the Nominating Committee and approval by the Board of Directors:

(a) one active ELCA and one active UCC clergy representative; and

(b) one lay representative which may be either ELCA or UCC.

The remaining members of each Governing Council shall be selected as provided in the Bylaws and policies of AMC, North Side and Condell.

ARTICLE VI
Officers

Section 6.1 *Officers.* The officers of the Corporation shall consist of a Chairperson, a Vice Chairperson, a President, a Secretary, a Treasurer, and such other assistant secretaries and assistant treasurers or such officers as deemed necessary. Any two or more offices may be held by the same person.

Section 6.2 *Selection and Term of Office.* All officers, other than the President, Chairperson and Vice Chairperson of the Corporation, shall be appointed by the President. The President, Chairperson and Vice Chairperson shall be elected by the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and qualified or until his or her death, resignation or removal as provided herein, provided that the Chairperson and the Vice Chairperson shall serve for a two-year term, but are eligible to serve an additional two-year term as long as the terms are not consecutive. Should the Director term of the Chairperson and Vice Chairperson of the Board end while he or she is serving in office, the Director term will be extended to allow completion of the officer term and subsequent terms will be adjusted to maintain class integrity.

The appointment or election of an officer shall not of itself create contract rights.

Section 6.3. *Removal.* Any appointed officer may be removed at any time, with or without cause, by the President or the Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. The President, Chairperson and Vice Chairperson may be removed from their office at any time, with or without cause, by an affirmative vote of two-thirds of the Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 6.4. *Delivery of Records.* All officers shall, within a period of not more than one week after the expiration of their terms of office, deliver to their successors all books, monies, documents and all other property of the Corporation in their possession.

Section 6.5. *Chairperson.* The Chairperson shall preside at all meetings of the Board of Directors and the Executive Committee, shall appoint all committee members and committee chairpersons, in conjunction with the President of the Corporation, upon review by the Executive Committee and subject to ratification by the Board, and shall perform such other duties as may from time to time be assigned by the Board of Directors.

Section 6.6. *Vice Chairperson.* The Vice Chairperson shall preside in the absence of the Chairperson or in the event of the Chairperson's inability or refusal to act and, when so acting, shall have all the power and authority and obligations of the Chairperson. The Vice Chairperson shall also perform such other duties as may be assigned from time to time by the Chairperson, the President or the Board of Directors.

Section 6.7. *President.* The President shall be the sole chief executive officer. The President shall be

responsible for the overall management of the Corporation. Subject to the direction and control of the Board of Directors, the President shall:

(a) be in charge of the business and affairs of the Corporation;

(b) see that the resolutions and directives of the Board of Directors are carried into effect except in those instances in which that responsibility is assigned to some other person by the Board of Directors; and

(c) in general, discharge all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors.

Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Corporation or a different mode of execution is expressly prescribed by the Board of Directors or these Bylaws, the President may execute for the Corporation any contracts, deeds, mortgages, bonds, or other instruments which the Board of Directors has authorized to be executed, either under or without the seal of the Corporation and either individually or with the Secretary, any assistant secretary, or any other officer thereunto authorized by the Board of Directors, according to the requirements of the form of the instrument. The President may vote all securities which the Corporation is entitled to vote except as and to the extent such authority shall be vested in a different officer or agent of the Corporation by the Board of Directors, and may act for the Corporation, or may designate any other officer of the Corporation so to act, in the recommendation for the election and the supervision of the chief executive officers of the Corporation's subsidiaries and corporations of which the Corporation is the sole member.

Section 6.8. *Vice Presidents.* If any Vice Presidents are appointed, they shall perform such duties and shall have such responsibilities as may be prescribed from time to time by the President or the Board of Directors.

Section 6.9. *Treasurer.* The Treasurer shall perform such financially related responsibilities as may be assigned by the President or the Board of Directors. The Treasurer shall:

(a) have charge of and be responsible for the maintenance of adequate books of account for the Corporation;

(b) have charge and custody of all funds and securities of the Corporation, and be responsible therefore, and for the receipt and disbursement thereof; and

(c) perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

The Treasurer may, but need not be, a member of the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 6.10. *Secretary.* The Secretary shall:

(a) record the minutes of the meetings of the Board of Directors in one or more books provided for that purpose;

(b) keep a record of the actions of the members of the Corporation;

(c) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(d) be custodian of the corporate records and of the seal of the Corporation; and

(e) perform all other duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the President of the Board of Directors

The Secretary may, but need not, be a member of the Board of Directors.

Section 6.11. *Assistant Treasurers and Assistant Secretaries.* The assistant treasurers and assistant secretaries shall perform such duties as shall be assigned to them by the Treasurer or the Secretary, respectively, or by the president or by the Board of Directors. The assistant treasurers and assistant secretaries may, but need not be members of the Board of Directors. If required by the Board of Directors, the assistant treasurers shall given bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

ARTICLE VII
Indemnification

Section 7.1. *General.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that the person was a Member, is or was a Director or officer of the Corporation, or is or was serving at the request of the Corporation as a

member, Director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contender or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 7.2. *Derivative Claims.* The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person was a Member, is or was a Director or officer of the Corporation, or is or was serving at the request of the Corporation as a Member, Director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, and except that no

indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Corporation unless and only to the extent that the Chancery Division, Circuit Court of Cook County, State of Illinois, or the court in which such action or suit was brought, shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 7.3. *Expenses.* To the extent that any person referred to in Section 6.1 or 6.2 has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to therein or in the defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 7.4. *Authorization for indemnification.* Any indemnification under Sections 6.1 or 6.2 (unless ordered by a court) shall be made by the Corporation only as authorized in a specific ease upon a determination that indemnification of the Member, Director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 6.1 or 6.2. Such determination shall be made

(a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding; or

(b) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested Directors so

directs, by independent legal counsel in a written opinion.

Section 7.5. *Advancement of Funds for Expenses.* Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Member, Director or officer to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation as provided in this Article VI.

Section 7.6. *Non-exclusive.* The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, bylaw, agreement, vote of disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Member, Director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7.7. *Insurance.* The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a member, Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in any such capacity, or arising out of the person's status as such, whether or not the Corporation would have the power to indemnify the person against such liability under the provisions of this Article VI.

ARTICLE VIII
Contracts, Checks, Deposits and Funds

Section 8.1. *Contracts.* The Board of Directors may authorize any officer or officers or agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 8.2. *Checks, Drafts, Etc.* All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers or agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice President of the Corporation.

Section 8.3. *Deposits.* All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

Section 8.4. *Gifts; Disclosure or Donors' Names.* The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purpose or for any special purpose of the Corporation. The names and addresses of all persons making contributions, gifts, bequests or devises to the Corporation shall be publicly disclosed in such manner as the donor may specify, the Board of Directors may from time to time determine or as may be required by

law. All property received by the Corporation by gift, bequest, devise or otherwise, shall be devoted exclusively to the furthering of the purposes of the Corporation as expressed in its Articles of Incorporation.

Section 8.5. *Loans to Directors or Officers.* No loan shall be granted to a Director or officer of the Corporation except in accordance with the Act.

ARTICLE IX
Books and Records

The Corporation shall keep correct and complete books and records of account, minutes of the Board of Directors and committees having any of the authority of the Board of Directors and such other records of the activities of the Corporation as shall be in accordance with commonly accepted good business standards and necessary for compliance with legal requirements.

ARTICLE X
Liquidation or Dissolution

A proposal to dissolve may be submitted at any meeting of the Directors, provided that at least 30 days written notice of the proposal is provided to all Directors. If it is approved at such meeting by a vote of a majority of the Board of Directors then in office, then the Board shall act as soon as reasonably possible to convey all real and personal property owned by the Corporation, subject to all obligations, debts, notes payable and mortgages that may be outstanding at that time, to the Illinois Conference Council of the United Church of Christ ("UCC") or an entity designated by the UCC, provided that the UCC or such designated entity is in existence at such time and qualifies as an exempt organization under section 501(c)(3) of the Code (or the corresponding provision of

any future United States Internal Revenue Law) and to Evangelical Lutheran Church in America ("ELCA") or to an entity designated by the ELCA Church Council (provided that the ELCA, or if an entity is so designated, such designated entity, is in existence at such time and qualifies as an exempt organization under section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law)) or their respective successors (provided such organizations are in existence at such time and qualify as exempt organizations under section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law)), and shall cause all things to be done to complete the dissolution. Such distribution shall be made fifty percent to the UCC (or entity designated by the UCC) and fifty percent to the ELCA (or an entity designated by the ELCA Church Council). The Board of Directors shall attempt to divide the assets in such a manner that the foregoing percentages are accomplished without there being any resulting joint ownership or use of property, plant and equipment and so as to distribute to the UCC (or any such designated entity), the property, plant and equipment associated with the Illinois Congregations of the UCC prior to January 17, 1995 and to the ELCA (or any such designated entity) the property, plant and equipment associated with ELCA prior to January 17, 1995.

Any such assets not so distributed shall be disposed of by the court of general jurisdiction of the county in which the principal office of the Corporation is then located, exclusively to such organization or organizations qualifying under section 501(c)(3) of the Code, in such manner as said court shall determine.

ARTICLE XI
Amendments

Section 11.1 Subject to Section 3.13, all proposed changes, amendments or alterations to these Bylaws shall only be made by the majority of the Board of Directors at any meeting, provided that at least 10 business days written notice of the proposal is provided to all Directors. Unless otherwise specified therein, such change, alteration or amendment shall become effective at the close of the meeting at which it is approved.

Section 11.2 Any proposed amendment (other than renumbering or changes to cross references as a result of amendments to other sections of the Article of Incorporation or Bylaws) to

(i) Article V of the Articles of Incorporation or Article IX of the Bylaws which would change the distribution of assets,

(ii) Section 3.2(b) of the Bylaws which would result in a change in the ratio of the number of Evangelical Lutheran Church in America ("ELCA") Directors to United Church of Christ ("UCC") Directors,

(iii) Section 3.13 which would change the required involvement of UCC and ELCA Directors,

(iv) Section 4.9 (as it relates to the composition of the Nominating Committee) which shall require the Bishop of the Chicago Metropolitan Synod and the Illinois Conference Minister of the United Church of Christ to provide approval prior to ratification by no less than two UCC Directors and no less than two ELCA Directors then in office, or

(v) the mission statement of the Corporation,

shall require both the Synod Bishop and the Illinois Conference Minister to be among the majority of Directors then in office voting for such change.

Further, prior to the Board's consideration of such amendments, the approval of the ELCA and the Illinois UCC Conference Council shall be obtained. The same approvals shall be required for any amendment of this Section 11.2.

ARTICLE XII
Miscellaneous

Section 12.1. *Informal Action.* Any action which could be taken at a meeting of the Board of Directors or any committee of the Board of Directors may be taken without a meeting if written consents setting forth the action to be taken shall be signed by all of those persons entitled to vote.

Section 12.2. *Telephonic Meetings.* Members of the Board of Directors may participate in and act at any meeting through the use of a conference telephone (or other equipment by means of which all persons participating in the meeting may communicate with each other) only upon approval of the Chairperson of the Board of Directors of the Corporation. The Chairperson of a Board committee shall have the sole discretion to decide whether a member of a Board committee may participate in and act at a meeting through the use of a teleconference device. Participation in any meeting in such manner shall constitute attendance in person at such meeting by the person or persons so participating.

Section 12.3. *Fiscal Year.* The fiscal year of the Corporation shall be the calendar year.

Section 12.4. *Corporate Seal.* The seal of the Corporation shall be in such form as may from time to time be adopted by the Board of Directors.

Section 12.5 *Offices.* The Corporation shall have and continuously maintain in the State of Illinois a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Illinois as the Board of Directors may from time to time determine.

Approved 11-20-2013
Effective 11-20-2013

COVENANTAL AGREEMENT
The Metropolitan Chicago Synod/ELCA
Advocate Health Care Network

"Having been set free from concern for ourselves, we are free for love and service to the neighbor." Martin Luther

Preamble:

The Advocate Health Care Network (Advocate) and the Metropolitan Chicago Synod of the Evangelical Lutheran Church in America (the Synod) affirm their ministry in health care and the covenantal relationship they share with one another.

The Evangelical Lutheran Church in America (ELCA) through its Program Unit for Church in Society (ELCA-Church in Society) has affiliated Advocate as a Category II Social Ministry Organization (SMO). Advocate is also affiliated with the United Church of Christ (UCC). As a direct result of ELCA affiliation, the Synod and Advocate cooperate together in a social ministry of health and healing.

The purpose of this covenant is to describe the relationship between Advocate and the Synod and to promote a relationship marked by mutuality, cooperation, transparency, accountability, and trust.

I. Guiding Principles

This covenant recognizes that, in this health care ministry, the integrity and autonomy of each ministry partner is maintained, while at the same time an environment is created in which each partner recognizes and acts upon the potential of cooperative responses to human needs. It recognizes that Advocate and the Synod are each fully responsible for their own management and fiscal affairs and accountable through their governing bodies to their respective mission statements.

This covenant also recognizes that the primary expression of Advocate's affiliation with the ELCA exists in the organization's governance structure which is the ELCA directors who serve on the Advocate Board of Directors. The ELCA directors, therefore, assume a principal and necessary role in the relationship between Advocate and the Synod.

In conversation with the ELCA-Church in Society, Advocate and the Synod have developed this covenant within the context of *A Social Ministry Partnership (1997),* which identifies the following Guiding Principles to which we have made specific application:

A. A Shared Mission

The shared health care ministry of Advocate and the Synod addresses the health needs of individuals, families, and communities. This service shall be rooted in a fundamental understanding of human beings as created in the image of God.

B. A Ministry Relationship

Working together in an essential ministry of service, Advocate and the Synod recognize that each possesses unique strengths and abilities. Advocate and the Synod agree to ongoing open communication and deliberation to determine how best to combine these gifts in order to most effectively carry out health care ministry.

C. Faithful Stewardship

Ultimately, all resources used in ministry belong to God. Both Advocate and the Synod commit to being faithful stewards of resources and to continuous growth in

knowledge, effectiveness, and generosity of response.

II. Shared Commitments

A. Mutual Support

Grateful to God for our shared mission, Advocate and the Synod recognize the integral nature of each other's work. To express this recognition and to support one another's ministries:

Advocate commits to:

- Publicly affirm its affiliation with the ELCA and the integral nature of Advocate's mission with the whole mission of the church;
- participate in and support Lutheran Services in America;
- participate with Synod congregations in health ministry activities, as resources allow, within the Advocate service areas;
- maintain an exofficio seat on the board at all times for the Bishop of the Synod
- participate with the Synod in the development of activities related to the ELCA Social Statement *Caring for Health: Our Shared Endeavor (2003)*;
- work with ELCA directors to provide orientation for newly elected Synod Council members specific to the mission and vision of Advocate;
- identify open positions on the Advocate Board of Directors and the Advocate Hospital Governing Councils to the Bishop of

the MCS in a timely fashion so as to invite submission Of interested persons by or through the Synod to the Advocate Board of Directors Nominating Committee;

- be available to attend and present at Synod Assemblies;
- encourage prayer for the Synod throughout the organization.

The Synod commits to:

- publicly acknowledge Advocate as integral to the ministry of the ELCA and encourage clergy, laity, and congregations to be involved in and to celebrate Advocate's ministries;
- share community news of Advocate activities in Synod written and electronic newsletters and maintain a link to Advocate on the Synod website;
- recommend to the Advocate Board of Directors Nominating Committee qualified candidates for the Board of Directors and Governing Councils;
- provide orientation to newly elected ELCA directors of Advocate specific to the mission and vision of the Synod;
- promote and nurture strong relationships with Advocate and other SMOs in the Synod via an annual gathering of SMO senior leaders whose organizations are located in the Synod;
- remain open and attentive to the concerns of patients and members of the communities served by Advocate;

- encourage prayer for Advocate within its congregations.

B. Open Communication

In order to ensure mutual accountability, the Synod commits to semi-annual meetings between the ELCA directors on the Advocate Board and the. Synod Council and/or Executive Committee of the Synod Council and, together with Advocate and the ELCA-Church in Society, agrees to attend special meetings which may be called by either Advocate, ELCA-Church in Society or the Synod as significant issues arise.

The semiannual or special meetings will provide opportunity to:

- review this covenantal agreement;
- review applicable Advocate philosophy and ELCA social policy statements;
- review and address concerns regarding issues of social, racial, and economic justice;
- review financial issues and opportunities for mutual financial support;
- consider opportunities for joint advocacy for health care justice and health care legislative reform;
- review the relationships between Advocate, the Synod and the local communities they each serve;
- review the overall health of the relationship between ELCA-Church in Society, the Synod and Advocate and address

areas of this relationship that may need strengthening in periodic Ministry Partnership Reviews as convened by ELCA-Church in Society.

III. Shared Ministry

"He (Jesus) sent out to proclaim the kingdom of God and to heal," Luke 9:2 NRSV

Advocate and the Synod reaffirm our shared commitment to living out Christ's command to serve the physical; emotional, and spiritual needs of all, especially, the "least among us" (Mathew 25:40).

Advocate and the Synod further recognize that the national health care system is in crisis. Because many problems in the provision of healthcare ministry cannot be solved in isolation from this national context, Advocate and the Synod agree to work together to provide leadership for healthcare reform in the state and nation.

In response to our shared calling and holding one another in prayer, Advocate and the Synod commit to continue to work together to explore, identify, and pursue faithful and effective ways to promote the health and vitality of ELCA congregations, health care centers, communities, families, and individuals throughout greater Chicago.

We, the undersigned, commit to this covenantal agreement on behalf of our respective organizations:

/s/ Paul R. Landahl Date: August 16, 2007
Bishop, Metropolitan
Chicago Synod – ELCA

/s/ James H. Skogsbergh Date: 8/16/07
President and CEO,
Advocate Health Care Network

Covenantal Agreement between Advocate Health Care Network and the Illinois Conference, United Church of Christ

We are called to
Feed the hungry;
Welcome the stranger;
Shelter the homeless;
Clothe the naked; and
Comfort the sick and the imprisoned
(Matt. 25:31 ff.)

Preamble:

The Advocate Health Care Network (Advocate) and the Illinois Conference, United Church of Christ (the Conference), affirm their ministry in health care and the covenantal relationship they share with one another. Recognizing the hand of God in their shared history, Advocate and the Conference join together to provide and support a diakonal ministry of healing, service, care, compassion, and hospitality.

The Illinois Conference has extended Recognition to Advocate Health Care as a Covenantal Partner institution in health and human service ministry. (Advocate's Recognition by the Conference includes provisions that are not restated in this covenantal agreement. These provisions remain in effect.)

Advocate is a member of both the UCC Council for Health and Human Service Ministries (CHHSM) and the Illinois Conference Council for Health and Human Service Ministries (Illinois CHHSM). Advocate is also affiliated with the Evangelical Lutheran Church in America (ELCA) and, as an affiliated Social Ministry Organization, is a member of Lutheran Services in America.

The purpose of this covenant is to describe the relationship between Advocate and the Conference and to promote a relationship marked by mutuality, cooperation, transparency, accountability, and trust.

I. Guiding Principles

This covenant recognizes that, in this health care ministry, the integrity and autonomy of each ministry partner is maintained, while at the same time an environment is created in which each ministry partner recognizes and acts upon the potential of cooperative responses to human needs. It recognizes that Advocate and the Conference are each fully responsible for their own management and fiscal affairs, and accountable through their governing bodies to their respective mission statements.

This covenant also recognizes that a primary expression of Advocate's affiliation with the Conference exists in the organization's governance structure, namely, the UCC directors who serve on the Advocate Board of Directors. The UCC directors therefore assume a significant and necessary role in the relationship between Advocate and the Conference.

Advocate and the Conference have developed this covenant in the context of the Conference's "Policy, Requirements, and Expectations for Covenantal Inclusion of Health and Human Service Ministries in the Life of the Illinois Conference," and in awareness of a similar covenant between Advocate and the ELCA. Together we embrace the following principles:

A. A Shared Mission

The shared health care ministry of Advocate and the Conference addresses the health

needs of individuals, families, and communities. This service shall be rooted in a fundamental understanding of human beings as created in the image of God.

B. A Ministry Relationship

Working together in an essential ministry of service, Advocate and the Conference recognize that each possesses unique strengths and abilities. Advocate and the Conference agree to ongoing open communication and deliberation to determine how best to combine these gifts in order to most effectively carry out health care ministry.

C. Faithful Stewardship

Ultimately, all resources used in ministry belong to God. Both Advocate and the Conference commit to being faithful stewards of resources and to continuous growth in knowledge, effectiveness, and generosity of response.

II. Shared Commitments

A. Mutual Support

Grateful to God for our shared mission, Advocate and the Conference recognize the integral nature of each other's work. To express this recognition and to support one another's ministries,

Advocate commits to:

- publicly affirm its affiliation with the UCC and the integral nature of Advocate's mission with the whole mission of the church;

- participate in and support CHHSM and Illinois CHHSM;
- apprise the Conference of any significant changes in its ministries, including plans for acquisitions, mergers/alliances, or partial or complete cessation of operations;
- be a partner with Conference congregations in health care ministry activities within its service areas, as resources allow;
- maintain an ex officio seat on the Board at all times for the Conference Minister of the Illinois Conference;
- participate with the Conference in the development of activities related to the various resolutions of the Conference and of the General Synod of the United Church of Christ;
- work with UCC directors to provide orientation, specific to the mission and vision of Advocate, for newly elected Illinois Conference Council (Conference Council) members;
- identify open positions on the Advocate Board of Directors and Advocate hospital Governing Councils to the Conference Minister in a timely fashion so as to invite submission of names of interested persons by or through the Conference to the Board of Directors Nominating Committee;
- be available to attend and present at Conference meetings, especially the Annual Meeting;

- encourage prayer for the Conference and its Associations throughout the organization.

The Conference commits to:

- publicly acknowledge Advocate as integral to the ministry of the UCC and encourage clergy, laity, and congregations to be involved in and to celebrate Advocate's ministries;
- share community news of Advocate activities in written and electronic Conference newsletters and maintain a link to Advocate on the Conference website;
- provide Advocate and other CHHSM/ Illinois CHHSM organizations with opportunities to share their ministry at public gatherings of the Conference;
- consult with Advocate and, when applicable, other CHHSM/Illinois CHHSM institutions, regarding any matters of concern to the Conference that may have a bearing on the ministry of Advocate or CHHSM institutions generally;
- recommend to the Advocate Board of Directors Nominating Committee qualified candidates for the Board of Directors and Governing Councils;
- provide orientation to newly elected UCC directors of Advocate concerning the mission and vision of the Conference;
- promote and nurture strong relationships with Advocate and other CHHSM/Illinois CHHSM members in the Conference;

- remain open and attentive to the concerns of patients and members of the communities served by Advocate;
- encourage prayer for Advocate within its congregations.

B. Open Communication

In order to ensure mutual accountability, Advocate and the Conference commit to annual meetings between the UCC directors on the Advocate Board and the Conference Council or its Executive Committee, and agree to attend special meetings that may be called by either Advocate or the Conference Council as significant issues arise.

The annual or special meetings will provide opportunity to:

- review this covenantal agreement;
- review applicable Advocate philosophy and UCC social policy resolutions or other statements;
- review and address concerns regarding issues of social, racial, and economic justice;
- review financial issues and opportunities for mutual financial support;
- consider opportunities for joint advocacy for health care justice and health care legislative reform;
- review the relationships between Advocate, the Conference, and the local communities they each serve;

- review the overall health of the relationship between the Conference and Advocate, and address areas of this relationship that may need strengthening.

Each covenant partner commits to listen, hear, and carefully consider the advice, counsel, and requests of the other. Advocate and the Conference recognize that each partner has a non-transferable responsibility to discern God's will and way for it in light of its context and circumstances.

III. Shared Ministry

> *"He sent them out to proclaim the kingdom of God and to heal."* (Luke 9:2)

Advocate and the Conference reaffirm our shared commitment to live out Christ's command to serve the physical, emotional, and spiritual needs of all, especially the "least among us" (Matt. 25:40).

Advocate and the Conference further recognize that the nation's health care system is in crisis. Because many problems in the provision of health care ministry cannot be solved in isolation from this larger context, Advocate and the Conference agree to work together to provide leadership for health care reform in the state and the nation. Together, they will seek to promote a just standard of health care that is accessible to all.

In response to our shared calling, and holding one another in prayer, Advocate and the Conference commit to continue working together to explore, identify, and pursue faithful and effective ways to promote the health and vitality of UCC congregations, health care centers, communities, families, and individuals throughout greater Chicago.

We, the undersigned, commit to this covenantal agreement on behalf of our respective organizations.

/s/ [Illegible] Date: 12/18/08
Conference Minister, Illinois
Conference, United States
Church of Christ

/s/ James H. Skogsbergh Date: 12/17/08
President and CEO,
Advocate Health Care Network

* * *

ILLINOIS

* * *

Downers Grove, 60515
Advocate Health Care
3075 Highland Pky., Ste 600
630-572-9393
Fax: 630-929-9930
Email: jim.skogsbergh@advocatehealth.com
Website: www.advocatehealth.com
James H. Skogsbergh, President/CEO

* * *

THAT THEY MAY ALL BE ONE

2016

Yearbook and Directory

United Church of Christ

PUBLISHED BY

The United Church of Christ
Center for Analytics, Research, and Data
700 Prospect Avenue
Cleveland, Ohio 44115
ucc.org/research

* * *

PRIMARY & ACUTE HEALTH CARE SERVICES

Advocate Health Care, 630-929-8700,
3075 Highland Parkway Suite 600,
Downers Grove, IL 60515

Advocate BroMenn Medical Center

Advocate Children's Hospital - Oak Lawn

Advocate Children's Hospital - Park Ridge

Advocate Christ Medical Center

Advocate Condell Medical Center

Advocate Eureka Hospital

Advocate Good Samaritan Hospital

Advocate Good Shepherd Hospital

Advocate Illinois Masonic Medical Center

Advocate Lutheran General Hospital

Advocate Sherman Hospital

Advocate South Suburban Hospital

Advocate Trinity Hospital

Deaconess Parish Nurse Ministries, LLC,
314-918-2596, 483 East Lockwood Ave, Suite 106,
St. Louis, MO 63119

Fairview Hospital, 216-476-7340,
18101 Lorain Ave., Cleveland, OH 44111-5656

PUBLIC GRANT MAKING

Deaconess Foundation, 314-436-8001,
211 N. Broadway, Suite 1260,
St. Louis, MO 6310

Evangelical Health Systems Corporation
2025 Windsor Drive
Oakbrook, IL 60521

Robert C. Rich
(202) 535-6663

E:EP:R:5
March 7, 1991

Church C	• United Church of Christ
Conference M	• Illinois Conference of the United Church of Christ
State A	• Illinois
Organization A	• Evangelical Health Systems Corporation (EHSC)
Organization B	• Evangelical Hospitals Corporation (EHC)
Organization C	• Evangelical Services Corporation (ESC)
Organization D	• HealthSource Incorporated
Organization E	• Council for Health and Human Service Ministries (CHHSM)
Organization F	• Professional Home Health Care Corporation
Organization G	• Evangelical School of Nursing
Directory B	• Official Directory of the Illinois Conference of the United Church of Christ
Directory C	• CHHSM Directory of Services
Committee N	• The Pension Committee
Plan O	• Part I of the EHSC Employees' Matched Savings Plan
Plan P	• Part II of the EHSC Employees' Matched Savings Plan
Plan Q	• EHSC Employees' Pension Plan

Plan R	• Bethany Hospital Employees' Pension Plan
Plan S	• Evangelical Care Corporation Retirement Savings Plan
Plan T	• Evangelical Health Systems Flexible Benefit Health Care Plan
Plan U	• Evangelical Health Systems Dependent Care Plan
Plan V	• EHSC Disability Income Protection Plan
Plan W	• EHSC Health Care Plan
Plan X	• EHSC Retiree Survivor Protection Plan

Gentlemen:

This letter is in response to a ruling request dated October 11, 1990, submitted on your behalf by your authorized representative, concerning whether Plans O, P, Q, R, S, T, U, V, W, and X qualify as church plans under section 414(e) of the Internal Revenue Code.

The following facts and representations have been submitted on your behalf:

Organization A is an organization described in section 501(c)(3) of the Code. Organization A is controlled by Church C, which is an organization described in section 501(c)(3) of the Code. Organization A is principally in the business of providing health care services through hospitals owned and operated by Organization B, which is an organization described in section 501(c)(3) of the Code. Both Organization A and Organization B are listed in Directory B, the official directory of Conference M, which is the subdivision of Church C in State A. Organizations listed in directory

B share common religious bonds and convictions with Church C.

Both Organization A and Organization B have been recognized by the attorney general's office of State A as qualifying for the religious exemption under State A's statutes regulating the administration of charitable trusts and corporations and the solicitation of charitable contributions.

Organization A is organized on a non-stock basis. Each director of Organization A's board of directors is approved by Church C as a result of the composition of the membership of Organization A and the manner in which the membership chooses the board of directors. The bylaws of Organization A provide for membership in Organization A upon application and payment of dues by (1) every church affiliated with Church C, (2) the medical staff of each institution owned and operated by Organization B, (3) the alumnae association of Organization G (Organization G is no longer in existence, as of 1988), and (4) any auxiliary of an institution owned and operated by Organization B which is recognized by Organization A's board of directors. In addition Conference M is automatically a member of Organization A, without application and without payment of dues. Each member of Organization A designates two delegates; these delegates elect the board of directors of Organization A. The board of directors

* * *

board of directors of Organization A. The principal function of Organization D is to provide home medical equipment and infusion therapy products and services. If any funds are generated by Organization D, they are used to further the charitable purposes of

Organization A. Organization D has approximately 30 employees.

Church C considers the health and human service ministries to be an integral part of its total ministry of preaching, teaching, and service. Directory C describes the connection between Church C's mission and the health ministry.

Organization E is the national organization which represents institutions and programs in health and human services related to Church C. Directory C, which lists Organization A as a member, states that the members of Organization E "covenant with one another and with Church C to extend the ministry of the compassionate Christ through caring witness and service. As Jesus declared the ministry to human need a Christian imperative, so [Organization E's] members choose to respond, offering their ministries in God's name and to God's glory."

Organization E also publishes a directory of services which lists the health and human service agencies related to Church C which are located in State A. Organization A and facilities operated by Organization A are the only entities included in the section on health care, which opens with a description of the connection between the church's mission and the healing ministry: "[Church C] considers healing an important component of church ministry. Church-related health care facilities maintain a Christian emphasis, believing that a faithful response to the ministry of Jesus Christ requires care for the whole person promoting wellness of body, mind and spirit."

The articles of incorporation of Organization A and of Organization B indicate that their purpose is in keeping with the mission of Church C, especially with

its healing ministry. The articles of incorporation of Organization A provide it is organized exclusively for religious, charitable, and educational purposes, including particularly to benefit, carry out the purposes of and perform the functions of Organization B and such other organizations which are operated and controlled by or supervised and controlled in connection with Organization B, by operating and providing leadership, control, and support in the provision of a high quality, comprehensive, coordinated health delivery system for the benefit of Organization B and its affiliated organizations.

Language in Organization A's 1989 annual report echoes statements in Directory C, speaking of Organization A's goal to treat not only the body, but also to respond to emotional and spiritual needs, and to sympathetically relieve distress.

The articles of incorporation of Organization B provide that it is organized exclusively for religious, charitable and educational purposes, including the establishment and operation of hospitals and other facilities for providing health care for the physical, mental and spiritual welfare of the general community.

The bylaws of Organization B provide that its programs are committed to be an extension of Church C's ministry of Jesus Christ. In furtherance of this commitment, the bylaws of Organization A and Organization B each provide for the establishment of a separate religion and health committee, the function of which is to oversee the continuing relationship of the spiritual and healing ministries of Organization A and Organization B.

All of the plans by which this ruling request relates are maintained by Organization A for the benefit of its employees or to employees of its subsidiaries, except for two plans maintained by Organization B for certain of its employees.

Plan O is a retirement income account plan as described in section 403(b)(9) of the Code and was established January 1, 1987. Plans P, Q, R, and S are retirement plans described under section 401 of the Code. Plan P was established January 1, 1987, Plan Q was established January 1, 1973, Plan R was established January 1, 1968, and Plan S was established October 1, 1985. Plans T, U, V, W, and X are welfare benefit plans. Plans T and U were established March 1, 1985, Plan V was established February 1, 1978, Plan W was established March 1, 1978, and Plan X was established June 1, 1980. Plans W and X, and the long-term disability portion of Plan V, are funded through a voluntary employees' beneficiary association such as described in section 501(c)(9) of the Code. All of the aforementioned plans are referred to in this ruling as "the plans", except where otherwise indicated. Plans T, U, V, W, and X are referred to as "the welfare plans".

Only employees of Organization A or it's not-for-profit subsidiaries are eligible to participate in the plans, except that the employees of Organization C and Organization D are eligible to participate in the welfare plans and in Plan Q. Approximately 118 employees of Organization C and Organization D participate in Plan Q, while approximately 8300 employees of Organization A and its not-for-profit subsidiaries participate in Plan Q. Therefore, less than one and one-half percent of the participants in Plan Q are employees of Organization A's for-profit

subsidiaries. A similar percentage of the employees of Organization C and Organization D participated in Plan Q at its inception. Likewise, approximately 118 employees of Organization C and Organization D participate in the welfare plans while approximately 6900 employees of Organization A and its not-for-profit subsidiaries participate in the welfare plans. Therefore, only slightly more than one and one-half percent of the participants in the welfare plans are employees of Organization A's for-profit subsidiaries. A similar percentage of employees of Organization C and Organization D participated in the welfare plans at their inception.

More than 50 percent of the total compensation paid is for the benefit of Church C employees who are not employed in connection with unrelated trades or businesses.

The plans maintained by Organization A and Organization B are administered by Committee N, which has the exclusive authority and discretion to control and manage the operation and administration of the plans. The sole function of Committee N is the administration of the plans for the benefit of the plans' participants and beneficiaries. Committee N makes recommendations with regard to the plans to Organization A's board of directors or to the executive committee, which is composed of directors on Organization A's board of directors and which has authority to act on behalf of the board of directors between regular meetings. The chairperson and other members of Committee N are appointed by the chairperson of the executive committee. The chairperson of the executive committee is the same person as the chairperson of Organization A's board of directors, unless the board of directors elects a different chairperson of the

executive committee. Committee N is composed of Organization A's president, the vice president of finance, the vice president of human resources, three other employees of Organization A or its subsidiaries, and two persons who are either directors of Organization A or not employees of Organization A.

For purposes of Code section 403(b)(2)(B) (relating to the exclusion allowance) and sections 415(c)(4)(C) and (D) of the Code (relating to the contribution limitations), contributions to Plan O on behalf of a plan participant will be aggregated with contributions made on his or her behalf to plans maintained by other entities which are controlled by or associated with Organization A. Also, for purposes of section 415 of the Code (relating to the contribution limitations) and as per sections 415(f) and (g), contributions to Plans P, Q, R, and S on behalf of a plan participant are aggregated with contributions made on his or her behalf to plans maintained by other entities controlled by or associated with Organization A.

Based on the foregoing facts and representations, you request a ruling that the plans are church plans within the meaning of section 414(e) of the Code.

Section 414(e)(3)(A) of the Code provides that a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(2) of the Code excludes from the definition of "church plan" a plan which is established or maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or business.

Section 1.414(a)-1(b)(2)(1)(A) of the Income Tax Regulations provides that a plan, other than a plan in existence on September 2, 1974, is established primarily for the benefit of employees (or their beneficiaries) who are not employed in connection with one or more unrelated trades or businesses if on the date the plan is established the number of employees employed in connection with the unrelated trades or businesses eligible to participate in the plan is less than 50 percent of the total number of employees of the church eligible to participate in the plan.

Section 1.414(e)-1(b)(2)(i)(B) of the regulations provides that a plan in existence on September 2, 1974, is to be considered established as a plan primarily for the benefit of employees (or their beneficiaries) who are not employed in connection with one or more unrelated trades or businesses if it meets the requirements of both paragraphs (b)(2)(ii)(A) and (B) (if applicable) in either of its first two plan years ending after September 2, 1974.

Under paragraphs (b)(2)(ii)(A) and (B) of section 1.414(e)-1 of the regulations, a plan is considered maintained primarily for employees of the church, for plan years after September 2, 1974, if in four out of five of its most recently completed plan years (A) less than 50 percent of the persons participating in the plan (at any time during the plan year) consist of employees employed in connection with an unrelated trade or business, and in the same year (B) less than

50 percent of the total compensation paid by the employer during the plan year to employees participating in the plan (if benefits or contributions are a function of compensation) is paid to employees employed in connection with an unrelated trade or business.

Section 414(e)(3)(B) of the Code defines "employee" to include a duly ordained, commissioned, or licensed minister of the church in the exercise of his ministry, regardless of the source of his compensation, and an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(C) of the Code provides that a church or convention or association of churches which is exempt from tax included as an employee under subparagraph (B).

Section 414(e)(3)(D) of the Code provides that an organization, whether a civil law corporation or otherwise is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

In order for an organization to have a qualified church plan, it must establish that its employees are employees of a church or a convention or association of churches under section 414(e)(3)(B) of the Code, or are deemed, under section 414(e)(3)(A), to be employees of a church or a convention or association of churches.

In view of the stated purpose of Organizations A, B and F, their organization and structure, their actual activities and their recognized status within Church

C, the employees of Organizations A, B and F meet the definition of "employee" in section 414(e)(3)(B) of the Code. They are deemed to be employees of a church by virtue of being employees of an organization which is exempt from tax under section 501 and which is controlled by or associated with a church or convention or association of churches.

Substantially all of the individuals covered by the plans are individuals who are employees of an organization which is exempt from tax under section 501 and which is controlled by or associated with Church C. Both at the time the plans were established and in all subsequent plan years less than two percent of the employees benefiting under any of the plans were employees of a for-profit subsidiary of Organization A and Organization B.

More than 50 percent of the total compensation paid is for the benefit of Church C employees who are not employed in connection with unrelated trades or businesses. Therefore, none of the plans is maintained primarily for the benefit of employees who are employed in connection with one or more unrelated trades or business.

The organization must also establish that its plan is established and maintained by a church, by a convention or association of churches, or by an organization described in section 414(e)(3)(A) of the Code, an organization must have as its principal purpose the administration of the plan and must also be controlled by or associated with a church or a convention or association of churches.

It has been submitted that the plans are administered by Committee N and that Committee N's sole purpose is the administration of the plans. Committee

N is appointed by Organization A's board of directors or its executive committee. Church C controls and is associated with Organization A. Thus, through its control by and association with Organization A, Committee N is controlled by and associated with Church C. Therefore the committee qualifies as an organization described in section 414(e)(3)(A) of the Code.

Also, for purposes of Code section 403(b)(2)(B) (relating to the exclusion allowance) and sections 415(c)(4)(C) and (D) of the Code (relating to the contribution limitations), contributions to Plan O on behalf of a plan participant will be aggregated with contributions made on his or her behalf to plans maintained by other entities which are controlled by or associated with Organization A. Also for purposes of section 415 of the Code (relating to the contribution limitations) and as per section 415(f) and (g), contributions to Plans P, Q, R, and S on behalf of a plan participant are aggregated with contributions made on his or her behalf to plans maintained by other entities controlled by or associated with Organization A.

Therefore, we conclude that the plans are maintained by an organization described in section 414(e)(3)(A) of the Code and are church plans within the meaning of section 414(e) of the code.

This letter expresses no opinion as to whether Plans P, Q, R, and S satisfy the requirements for qualification under section 401(a) of the Code. The determinations as to whether a plan is qualified under section 401(a) is within the jurisdiction of the appropriate Key District Director's Office of the Internal Revenue Service.

This letter also expresses no opinion as to whether Plan O satisfies the requirements of section 403(b)(9) of the Code.

While not crucial to our holding above, we note that an arrangement intended to satisfy the requirements of section 403(b) of the Code must satisfy the nondiscrimination requirements of section 403(b)(12).

Those requirements do not, however, apply to plans maintained by "churches" or "qualified church-controlled organizations" as defined in section 3121(w)(3)(A) and (B) of the Code. We express no opinion in this letter as to whether Organization A is a "church" or "qualified church controlled organization" for purposes of section 403(b)(12).

This letter has been sent to your authorized representative in accordance with the power of attorney submitted with the ruling request.

Sincerely yours,

/s/

Joyce E. Floyd
Chief, Employee Plans
Rulings Branch

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose

Internal Revenue Service
Department of the Treasury
Washington, DC 20224

Contact Person: Bill. Kochis

Telephone Number: (202) 622-6126

In Reference to: OP:E:EP:T:4

Date:

Uniform Issue List No. 414.08-00

Lutheran General HealthSystem
c/o Advocate Health Care Network
2025 Windsor Drive
Oak Brook, IL 60521

Attn: Mr. Lawrence J. Majka

Legend:

Church A	=	Evangelical Lutheran Church in America Chicago, Illinois [ELCA]
Church B	=	United Church of Christ Cleveland, Ohio [UCC]
Organization A	=	Advocate Health Care Network (formerly EHS/ LGHS Co.) [Advocate]
Pension Committee	=	Advocate Health Care Network Pension Committee
Directory	=	Evangelical Lutheran Church in America Year-book
Corporation A	=	Lutheran General Health-System Park Ridge, Illinois [LGHS] (Prior to July 20, 1992 used the name

Lutheran General Health Care System)

Corporation B = Evangelical Health Systems Corporation [EHS]

* Corporation C = The Lutheran General Medical Group, S.C. (formerly Health Care Medical Foundation, S.C.) [LGMG]

Corporation D = Health Direct, Inc, and its wholly-owned subsidiary HEALTH DIRECT Insurance, Inc. [for-profit corporation] [Health Direct]

Corporation E = Parkside Health Management Corporation of Cleveland [for-profit corporation] [PHMCC]

Partnership F = LGH/Golf ASTC Joint Venture [for-profit partnership] [Golf ASTC]

Corporation G = Health Care Materials Corporation (was owned by Corporation G-1 and merged into Corporation G-1 on December 31, 1992) [for-profit corporation] [HCMC]

Corporation G-1 = Parkside Associates, Inc. [PAI] formerly Parkside Group, Inc. d/b/a Parkside Stone Center and PAI Survey Research, Inc. [for-profit corporation]

* Hospital H	= Lutheran General Hospital Park Ridge, Illinois [LGH] Parkside Human Services Corporation (merged into Hospital H on October 23, 1989)
Hospital I	= Evangelical Hospitals Corporation [EHC]
* Hospital J	= Parkside Lutheran Hospital [PLR] Park Ridge, IL (merged into Hospital H on December 31, 1991)
* Entity K	= Lutheran General Behavioral Health Corporation [LGBH] (its predecessor-Entity K-1)
* Entity K-1	= Parkside Medical Services Corporation Park Ridge, IL (Renamed Lutheran General Behavioral Health Corporation on July 15, 1992) [Parkside]
* Entity L	= Parkside Lodge of Illinois, Inc. [PLI] Mundelein, IL
* Entity M	= Parkside Lodge of New York, Inc. Park Ridge, IL (ceased operations)
* Entity N	= Adams County Task Force on Alcoholism and Alcohol Problems, Inc. Commerce City, CO [Task Force] (ceased operations)

* Entity O	= Parkside Development Corporation d/b/a The Moorings of Arlington Heights Park Ridge, IL [Moorings]
* Entity P	= The Park Ridge Center [PRC] Park Ridge, IL
* Entity Q	= Parkside Senior Services [PSS] Park Ridge, IL
State S	= Illinois
Plan T	= Lutheran General Health-System Personal Choice Medical Plan
Plan U	= Lutheran General Health-System Personal Choice Flexible Benefits Plan
Plan V	= Lutheran General Health-System Dental Care Plan
Plan W	= Lutheran General Health-System Basic Retirement Plan
Plan X	= Lutheran General Health-System Retirement Savings Plan (RSP]
Plan Y	= Lutheran General Health-System Retirement savings Plan - 403-B9
Plan Z	= Lutheran General Health-System Retirement Savings Plan - 403-B9II

* Tax-exempt not-for-profit corporations controlled by Corporation A.

Ladies and Gentlemen:

This is in response to a ruling request submitted by your authorized representative on December 28, 1994, as supplemented by additional correspondence dated April 10, 1995, August 8, 1995, August 22, 1995, October 5, 1995, March 4, 1996, May 13, 1996, June 3, 1997, August 11, 1997, February 24, 1998, August 7, 1998, August 19, 1998, September 14, 1998, and September 18, 1998. Your ruling request concerns whether the above-named welfare plans and retirement plans constitute "church plans" under section 414(e) of the Internal Revenue Code (the "Code") from their respective establishment dates through December 31, 1996.

The following facts and representations have been submitted:

Under the Articles of Incorporation of Corporation A, two of Corporation A's purposes are: (1) to promote, support, develop and encourage the charitable, educational and scientific purposes of Church A and other affiliated tax-exempt organizations of Church A; and (2) to establish, own, operate, maintain and conduct the affairs of hospitals, home health agencies, nursing homes, homes for the aged, substance abuse centers, rehabilitation centers, nursing centers, pharmacies, laboratories, training and research facilities, deaconess homes, and other facilities or programs incidental thereto. From January 1, 1988 until January 17, 1995, the sole corporate member of corporation A was Church A, acting through its Church Council (the highest administrative body of Church A). The Articles of Incorporation and Bylaws of Corporation A reserve powers to Church A with respect to approval of amendments to the Articles of Incorporation, appointment of all directors of Corporation A from candidates

nominated by Corporation A and removal for cause of any directors so appointed, and approval of any merger, consolidation, liquidation, or sale of substantially all of the assets of Corporation A. At least a simple majority of the directors of Corporation A were required to be members of Church A.

Corporation A is a State S not-for-profit corporation. Corporation A is recognized as a tax-exempt organization described in section 501(c)(3) of the Code by a letter ruling from the Internal Revenue Service (the "Service") dated October 19, 1988. The letter was issued to the predecessor organization to Corporation A. The predecessor organization was renamed Corporation A on July 20, 1992, and Corporation A otherwise represents a continuation of the predecessor corporation. At all relevant times Corporation A has been listed in the Church A Directory, a publication that lists certain organizations controlled by or affiliated with Church A.

In addition, the predecessor organization to Corporation A received a group exemption letter from the Service, dated October 19, 1988, which holds that the related entities listed therein are tax-exempt organizations under section 501(c)(3) of the Code. Included in the October 19, 1988 group exemption letter are: Hospital H, Hospital J, Entity K-1 (predecessor to Entity K), Entity L, Entity H, Entity N, Entity O and Entity Q.

Corporation A sponsors three Welfare Plans and four Retirement Plans for its employees and employees of its affiliates: Plan T, Plan U and Plan V are collectively referred to as "Welfare Plans." Plan W, Plan X, Plan Y and Plan Z are collectively referred to as "Retirement Plans."

Hospital H is a State S not-for-profit corporation. One of the purposes of Hospital H is to establish, own, operate, maintain, and conduct the affairs of hospitals, alcoholism treatment centers, drug abuse and other substance abuse centers, rehabilitation centers, nursing centers, pharmacies, laboratories, training and research facilities, deaconess homes, day care programs and community health education programs, and other facilities and programs incidental thereto. The sole member of Hospital H is Corporation A. As the sole member of Hospital H, Corporation A has sole authority to approve all amendments to the hospital's Articles of Incorporation, Bylaws and mission statements, to appoint and remove all directors, to appoint and remove the chairperson and vice chairperson of the Board of Directors, and to approve any merger, consolidation, transfer, liquidation or the sale of all or substantially all the assets of the hospital. Hospital H is a tax-exempt organization under section 501(c)(3) of the Code and is listed in the group exemption letter dated October 19, 1988. Hospital H is listed in the Church A Directory. Through Corporation A, Hospital H has been indirectly controlled by Church A.

On October 21, 1994, Corporation A and Hospital H signed a combination agreement with Corporation B and Hospital I. Corporation B and Hospital I, both of which are related to Church B, maintain several church plans which were the subject of favorable private letter rulings from the Service. Pursuant to the combination agreement, Organization A, a newly-created corporation, began to serve as the parent of the four parties to the combination agreement as of January 17, 1995. Organization A (which initially had a different name) was organized under State S law on November 10, 1994. On January 17, 1995, the name of the corporation was changed to Organization A.

Section 2.1 of the combination agreement concerns objectives and provides, in part, that the parties desire to unite two highly compatible health systems in order to (i) sustain the values, reputations and leadership roles of the two founding health care systems and thereby preserve and extend faith-based, ecumenical health care delivery throughout the greater metropolitan area, (ii) capitalize on a common commitment to the principles of continuous quality improvement, (iii) develop an integrated medical care delivery system with the capability of providing high quality, cost effective health services in a seamless continuum of care and enhanced access to such services for a broad and diverse population, (iv) foster a primary care-based integrated regional delivery system to deliver quality patient care and to maintain qualified, diverse medical staffs, and (v) continue a common mission of serving the urban poor.

Under section 2.1 of Organization A's Bylaws Organization A has 24 Members ("Organization A Members"), twelve of whom are appointed by Church B or congregations thereof, and twelve of whom are appointed by Church A. Under section 2.5 of the Bylaws, a Church A-appointed Organization A Member may be removed from office, with or without cause, only by action of Church A. A Church B-appointed Organization A Member may be removed from office, with or without cause, only by action of Church B. These 24 Members have the authority to elect the Board of Directors of Organization A, which consists of not less than nineteen nor more than twenty-one voting members. The Board of Directors of Organization A consists, in part, of seven "Church A Directors," of whom at least four must be clergy or lay members of Church A, and the Board consists, in part, of ten "Church B Directors," of whom at least six must be

clergy or lay members of Church B. Under section 3.5 of Organization A's Bylaws, any "Church A Director" may be removed, with or without cause, by a majority vote of the twelve church A-appointed Organization A Members. Any "Church B Director" may be removed, with or without cause, by a majority vote of the twelve Church B-appointed Organization A Members.

No ruling or determination has been made by the Service as to whether Organization A is exempt from tax under section 501(c)(3) of the Code. As described below, Organization A ceased to exist on January 1, 1997.

In your ruling request dated December 28, 1994, and in a letter dated April 10, 1995, it is represented that after the consummation date (January 17, 1995) of the aforesaid combination agreement the organizations and entities described in the ruling request are still controlled by churches within the meaning of section 414(e) of the Code. By letter dated February 24, 1998, your authorized representative has represented that Church A and Church B constitute a "convention or association of churches" under section 414(e) of the Code for purposes of the Retirement Plans and Welfare Plans described herein. A letter from your authorized representative, dated May 13, 1996, states that, pursuant to the terms of the combination agreement, Organization A became the sole corporate member of both Corporation A and Corporation B on January 17, 1995. As a result, the Board of Directors of Organization A appointed the Board of Directors of Corporation A and Corporation B, and these two boards were made to be overlapping. Hospital H and Hospital I retained Corporation A and Corporation B as their sole corporate members, respectively. It was represented that the structure of

Organization A can be analogized to a traditional corporate structure in which Organization A serves as the parent corporation, and Corporation A and Corporation B exist as Organization A's first-tier subsidiaries and Hospital H and Hospital I exist as second-tier subsidiaries.

Organization A's Bylaws, at section 4.12, provide that the Pension Committee shall administer the pension plans for the Corporation and its subsidiaries and employ agents, attorneys, accountants, actuaries and other persons to carry out the administration of the plan(s). The Pension Committee shall have five members, consisting of one Organization A director and four non-directors. By your letter dated August 22, 1995, it is represented that the members of the Pension Committee were first appointed at the January 17, 1995 meeting of the Board of Directors of Organization A, and since that date the Pension Committee has administered the Retirement Plans and Welfare Plans sponsored by Corporation A. On September 20, 1995, the Board of Directors of Organization A amended its Bylaws to formally add that the Pension Committee shall administer the Welfare Plans as well as the Retirement Plans.

Corporation C was incorporated in State S to be operated exclusively for charitable, educational and scientific purposes and, in particular, to aid in and promote the prevention and treatment of human ailments and injuries including, but not limited to, through support of the programs and activities of Hospital H and its affiliates. Before Corporation C adopted its current name, it was the subject of a favorable ruling letter issued by the Service on January 8, 1985, concluding that it was exempt from tax under section 501(c)(3) of the Code. Under the Bylaws of

Corporation C only physicians employed by the corporation may own shares of stock of the corporation and no person shall own more than one share. The business affairs of Corporation C shall be managed by its directors, subject to the reserve powers granted to Hospital H, Under section 4.19 of the Bylaws of Corporation C, the Board of Directors of Hospital H shall have powers reserved to it over Corporation C to: (1) approve amendments to the Articles of Incorporation; (2) approve amendments to the Bylaws; (3) approve mission statements and strategic plans; (4) appoint the chairperson of the Board of Directors from the physicians nominated by the Board of Directors; (5) appoint the president of the corporation from the physicians nominated by the Board of Directors; (6) approve any merger, consolidation, dissolution or transfer of assets; (7) approve operating and capital budgets; and (8) approve debts, and approve outside auditors. In addition, eight of the fifteen directors of Corporation C are Hospital H's clinical division chairpersons. Under Hospital H's Bylaws, the president of Hospital H appoints the clinical division chairpersons, and the corporate member of Hospital H, Corporation A, in turn, appoints the president of Hospital H. In the event of a dissolution of Corporation C, its properties, after payment of all liabilities, will be transferred to Hospital H. It has been represented, therefore, that at all relevant times, Corporation C has been controlled by Hospital H, and, indirectly, controlled by Corporation A.

Hospital J was formed as a State S not-for-profit corporation. Hospital J was included in the tax-exempt organization group exemption letter dated October 19, 1988. Hospital J's Articles of Incorporation stated that it shall be affiliated with Church A and that its sole corporate member shall be Corporation A. Articles of

Amendment to the Articles of Incorporation of Hospital J filed on June 30, 1988, named Entity K-1 as the sole member. The Bylaws of Hospital J state that its purposes are to establish, own, operate, maintain and conduct the affairs of hospitals, alcoholism treatment centers, drug abuse and other substance abuse centers, pharmacies, laboratories, training and research facilities and other facilities and programs incidental thereto. Hospital J merged into Hospital H on December 31, 1991, pursuant to a plan of merger. While Hospital J retained a separate existence, its employees participated in the various Retirement and Welfare Plans. It is represented that Hospital 3 was controlled by a church at all relevant times by virtue of Church A's control over either of its sole members, Entity K-1 or Corporation A.

Each of Corporation A's not-for-profit entities has similar Bylaws. The provisions that the Bylaws have in common are as follows: (1) each entity is a non-profit corporation, (2) the sole member of each entity is Corporation A, (3) each entity is governed by a Board of Directors, (4) Corporation A has sole authority to appoint and remove directors of each entity, (5) Corporation A has sole authority to approve amendments to the Articles of Incorporation, Bylaws, mission statements, (6) Corporation A must approve any merger, consolidation, transfer, liquidation or sale of all or substantially all the assets, and (7) Corporation A approves operating and capital budgets. It is represented that each of the following entities controlled by Corporation A was indirectly controlled by Church A until January 17, 1995, and that during the period from January 17, 1995, through December 31, 1996, these entities were indirectly controlled by a convention or association of Churches A and B within the meaning of section 414(e) of the Code.

Entity K-1 is a not-for-profit corporation listed in the group exemption letter dated October 19, 1988. According to its Certificate of Incorporation, the purposes of Entity K-1 are to establish, develop, sponsor, promote and conduct educational programs, research, treatment or detoxification facilities, housing centers, counseling services, and other charitable activities related to alcoholism and substance abuse treatment and mental illness. Entity K-1 was renamed Entity K; its sole member is Corporation A and various reserved powers are conferred on the sole member: For example, the Board of Directors of Entity K-1 shall be elected annually by the sole member and may be removed by the sole member for any reason, and the Board of Directors shall have the power to amend or repeal the Bylaws subject to the approval of the sole member. Entity K-1 was renamed Entity K on July 15, 1992.

Under Entity K's Bylaws, restated July 17, 1992, the purposes of Entity K are to establish, develop, sponsor, promote and conduct educational programs, research, treatment or detoxification facilities, housing centers, counseling services, and other charitable activities related to alcoholism and substance abuse treatment and mental illness. The Bylaws of Entity K at section 2.1 state that the corporate member of Entity K shall be Corporation A. The Bylaws of Entity K also state that it shall be affiliated with Corporation A. Entity K is listed in the Church A Directory.

Entity L is a not-for-profit corporation. Entity L is included in the tax-exempt organization group exemption letter dated October 19, 1988. Under its Certificate of Incorporation, the purposes of Entity L are to establish, develop, sponsor, promote and conduct edu-

cational programs, research, treatment or detoxification facilities, housing centers, counseling services, and other charitable activities related to alcoholism and substance abuse treatment and mental illness. The sole member of Entity L is Entity K. As the sole member, Entity K has sole authority to exercise the following powers: to approve all amendments to the Certificate of Incorporation, Bylaws and mission statements; to appoint and to remove all directors; to nominate all candidates for the chairperson or vice chairperson of the Board of Directors; to appoint the president; and to approve any merger, consolidation, transfer, liquidation or sale of assets. All of Entity L's employees are leased from Hospital H, and the schedules submitted do not show any employees of Entity L as participating in any of the Retirement Plans or Welfare Plans.

Entity M was a not-for-profit corporation listed in the group exemption letter dated October 19, 1988. Entity M's Bylaws show that the primary goal was to provide quality residential, partial hospitalization and out-patient care to adult and adolescent substance abusers and other related behavioral health care services. Its Bylaws show that the corporate member was Entity K-1. Although it is represented that Entity M ceased operations and employs no employees, your submission dated August 22, 1995, shows that Entity M's former employees who participated in the Welfare Plans and Retirement Plans still retain deferred vested benefits under the various Retirement Plans.

Entity N is a non-profit corporation included in the tax-exempt organization group exemption letter dated October 19, 1988. An amendment to the Articles of Incorporation of Entity N, adopted May 20, 1986, provides that Corporation A shall be the sole corporate

member, that the member shall elect the directors and may remove a director with or without cause, and that the member shall approve all amendments to the Articles of Incorporation and Bylaws of Entity N. The Articles of Incorporation of Entity N state that one of its purposes is to establish, develop, promote and conduct educational programs, research, treatment or detoxification facilities, housing centers, counseling services, and other charitable activities related to alcoholism and alcohol problems. An amendment to the Articles of Incorporation of Entity N, adopted on April 19, 1988, provides that the sole corporate member shall be Entity K-1. A resolution of dissolution was adopted on November 10, 1994, and Entity N ceased operations.

A Certificate of Amendment of Certificate of Incorporation of Entity O, dated July 1, 1988, states that the purposes for which the corporation is organized are exclusively charitable, scientific or educational within the meaning of section 501(c)(3) of the Code. Entity O is included in the tax-exempt organization group exemption letter dated October 19, 1988. On December 29, 1988, the Certificate of Incorporation was corrected to state that upon dissolution of Entity O, the Board of Directors shall distribute all of the remaining assets to Entity Q. Entity Q was the former sole member of Entity O. However, on September 12, 1994, Entity Q merged into Corporation A, its sole member. Corporation A subsequently became the sole member of Entity O. Under section 2.1 of the Bylaws of Entity O, Corporation A is named as the sole member, and, as such, the member shall have certain enumerated powers including the power to (1) appoint the Board of Directors, and remove members from it, (2) approve amendments to the Bylaws, and (3) approve all operating and capital budgets. At all

relevant times Entity O has been controlled either directly or indirectly by Corporation A. Entity O is listed in the Church A Directory.

Entity P's Articles of Incorporation state that Entity P is to operate exclusively for charitable, scientific or educational purposes within the meaning of section 501(c)(3) of the Code. Some of the listed purposes of Entity P are (a) to engage in critical research in fields that connect topics dealing with health, faith and ethics, (b) to gather extant literature, generate new knowledge, and establish data bases to study the interactions among these fields, and (c) to provide scholarly reflection and resources (publications, films, seminars, conferences, etc.) which are intended to inform and influence the education and practice of religious leaders and health care providers. Entity P is listed in the Church A Directory. Entity P was the subject of a favorable determination letter from the Service dated August 20, 1990, concluding that Entity P was exempt from tax under section 501(c)(3) of the Code. Under section 2.1 of Entity P's Bylaws the corporate member is Corporation A, and, as such, Corporation A has sole authority to appoint and remove all directors of Entity P. The Articles of Incorporation of Entity P provide that in the event of dissolution Entity P's remaining assets shall be transferred to Corporation A.

Entity Q was organized and operated as a nonprofit corporation in State S and was included in the tax-exempt organization group exemption letter dated October 19, 1988. The first purpose listed in its Articles of Incorporation is to support, aid and develop methods and means to make the lives of older people independent, healthful, meaningful and secure in an environment which emphasizes human service and

concern, which includes, but is not limited to, the establishment of facilities for nursing care and elderly housing, facilities and programs for social services and education of older persons, their families, professionals who serve older persons and other members of the communities served by the corporation, and such other facilities or programs as may from time to time be appropriate to the accomplishment of these goals. The Articles of Incorporation of Entity Q also provide that, in the event of dissolution, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities, distribute all of the remaining assets of the corporation by transferring such assets to Corporation A.

On September 12, 1994, Entity Q was merged into Corporation A. Before the merger, the Bylaws of Entity Q stated that its corporate member was Corporation A, and, as such, Corporation A had sole authority to appoint and remove all directors of Entity Q.

Corporation G-1 is a State S for-profit corporation that is fully owned by Corporation A. The lines of business of Corporation G-1 are consistent with the Bylaws of Corporation A and the Articles of Incorporation of Corporation A and Corporation A's predecessor, which provide, in part, that Corporation A is organized to establish, own, operate, maintain and/or conduct the affairs of hospitals, home health agencies, nursing homes for the aged, substance abuse centers, rehabilitation centers, nursing centers, pharmacies, laboratories, training and research facilities, deaconess homes, and other facilities or programs incidental thereto . . . to contract with other organizations, for-profit and not-for-profit, with individuals, and with governmental agencies in furtherance of these

purposes. Corporation G-1 does business under two names--Corporation G-1's stone center and Corporation G-1's survey research. Corporation G-1's stone center expands the healthcare ministry of Church A, Church B, Corporation A and Organization A by ministering to individuals suffering from kidney stones and gallstones through the provision of employees for a kidney stone/gallstone center. Corporation G-1's survey research business fulfills the educational and healthcare ministry aims of Corporation A by providing patient data to hospitals, improving patient care through its consulting activities, and ensuring quality patient care through its management services. It was submitted that Corporation G-1 does not engage in a trade or business that is unrelated to the healthcare ministry of Church A, Church B, Corporation A, or Organization A under section 414(e)(2) of the Code.

Schedules submitted show a small number of employees of Corporation G-1 who participate in Plan Y and Plan Z; however, a representation was made that plan benefits were accrued while these employees were employed by a Code section 501(c)(3) tax-exempt entity controlled by Corporation A. It is represented that Corporation G-1 is indirectly controlled by Church A through Church A's control of its sole shareholder, Corporation A.

Corporation D is a State S for-profit corporation. Corporation D is 50 percent owned and controlled by Corporation A, an entity controlled by Church A, and 50 percent owned and controlled by Corporation B, which is controlled by Church B. As the sole shareholders of Corporation D, Corporation A and Corporation B have the power to appoint and to remove, with or without cause, an equal number of directors, to

authorize the dissolution of Corporation D and to amend or to restate its Bylaws. The shareholders also have numerous approval powers, including the right to approve all amendments or restatements of the Articles of Incorporation, the annual budget, the distribution of dividends or other assets, the purchase, sale, lease, exchange, gift, pledge or mortgage of any real property, any borrowing, any affiliation, merger, or consolidation, and the issuance of shares. Corporation D fulfills the healthcare ministry aims of Church A, Church B, Corporation A, and Organization A by providing various services to patients including the National Second Opinion Program, employee health centers, claims administration, and psychiatric case management. The National Second Opinion Program provides patients seeking a second opinion with access to over 20,000 physicians representing over 40 different specialties and subspecialties in many areas of the country. Corporation D's employee health centers sponsor wellness programs, physical examinations, hearing/vision screening, radiology services, physical therapy, and drug and alcohol screenings for employers interested in maintaining the health of their employees. Therefore, it was submitted that Corporation D does not engage in a trade or business that is unrelated to the healthcare ministry of Church A, Church B, Corporation A, or Organization A under section 414(e)(2) of the Code.

Corporation D, through a wholly-owned subsidiary, operates a health maintenance organization (an "HMO"), as well as a life, accident and health insurance company. It is stated that this subsidiary fulfills the ministry aims of Church A, Church B, Corporation A, and Organization A by increasing access to medical care by providing and safeguarding the financial resources for patients to access healthcare and by

regulating the quality and cost of healthcare through its HMO. Through the subsidiary, Corporation A significantly expands its ability to minister to a broader variety of individuals. Therefore, it was submitted that the subsidiary does not engage in a trade or business that is unrelated to the healthcare ministry of Church A, Church B, Corporation A, or Organization A under section 414(e)(2) of the Code.

Schedules submitted show a small number of employees of Corporation D who participate in Plan Y and Plan Z; however, a representation was made that plan benefits were accrued while these employees were employed by a Code section 501(c)(3) tax-exempt entity controlled by Corporation A. It is submitted that corporation D is indirectly controlled by churches because Corporation D is controlled by Corporation A and Corporation B, its only shareholders, which are, in turn, controlled by Church A and Church B, respectively.

Corporation E, a for-profit corporation, was incorporated on August 28, 1984. Prior to January 1, 1992, Corporation E was 50 percent owned by Corporation D, and the other 50 percent of the common stock was owned by an unrelated entity. On January 1, 1992, Corporation D transferred its 50 percent interest in Corporation E to Corporation G-1. On June 29, 1993, Corporation G-1 transferred its interest in 50 percent of the common stock of Corporation E to the aforementioned unrelated entity. It is represented that during the period prior to June 29, 1993, Corporation D or Corporation G-1 could control. Corporation E through its 50 percent ownership of Corporation E, and that Church A indirectly controlled Corporation E. Prior to June 30, 1993, a few employees of Corporation E

participated in two Retirement Plans and one Welfare Plan, and they ceased participation on that date.

Corporation E's Articles of Incorporation provide, in part, that the corporation is organized to establish, own, maintain and operate a hospital, clinic, surgical center, emergency center or any other facility providing services and treatment to persons suffering from illness or injuries; to provide accommodations for such persons and to provide Medical, surgical, radiological and nursing services; to conduct a training school for nurses; to engage in research in the medical arts; to operate such hospital, clinic, surgical, or emergency center on a for-profit basis charging and receiving compensation for such services, treatment and accommodations, and to do all things necessary or incident to establishing, owning, maintaining and operating said institutions. Corporation E may also provide a broad range of human services, including such healthcare related services as it may become licensed to render, pastor counselling, community health education, and programs relating to the aging and further to render management services, including billing and collection services, data processing services, real estate management services, and general consultation and management services and to develop and conduct programs, courses, and seminars for research, study, and treatment of human beings in accordance with Christian values. Therefore, it is submitted that Corporation E did net engage in a trade or business that is unrelated to the healthcare ministry of Church A or Corporation A under section 414(e)(2) of the Code.

It is stated that as owner of one half of Corporation E, either Corporation D or Corporation G-1 retained the power to insure that Corporation E was operated consistently with the religious and moral teachings of

Church A. It is also represented that through its control of one half of the Board of Directors of Corporation E, either Corporation D or Corporation G-1 effectively could prevent the aforesaid unrelated owner of the other one half interest in Corporation E from taking actions which would violate the ethical and religious teachings of Church A.

Partnership F is a State S for-profit general partnership that is 50 percent owned by Hospital H and 50 percent owned by a State S limited partnership unrelated to Hospital H. Partnership F manages and operates a freestanding ambulatory surgical treatment center licensed by State S. The joint venture agreement at section 2.01 provides that a committee shall be established for purposes of implementing the management of the Joint Venture. Under section 2.02 of the agreement, Hospital H appoints three representatives out of a total of six to the management committee, and may replace these representatives at any time. It is stated that Hospital H controls its three representatives on the management committee and therefore can block any action inconsistent with the religious or moral teaching of Church A or Church B by voting against such actions. It is submitted that, at all relevant times, Partnership F has been controlled (indirectly) by a church or churches, by virtue of Church A's control of Hospital H prior to January 17, 1995, and by virtue of Church A and Church B's control of Hospital H through Organization A on and after January 17, 1995. Employees of Partnership F only participated in the Welfare Plans.

Corporation G, a State S for-profit corporation, was incorporated on June 27, 1985. At that time 70 percent of its stock was owned by Corporation G-1 and 30 percent of its stock was owned by a hospital supply

company. On January 18, 1988, corporation G-1 purchased all of the stock owned by the hospital supply company, and, therefore, all of the shares of Corporation G were owned by Corporation G-1. All the shares of Corporation 0-1 were owned by the predecessor to Corporation A. On December 31, 1992, Corporation G was merged into Corporation G-1.

Before its merger into Corporation G-1, Corporation G distributed health care products and provided operational support to hospitals through printing, graphic services, equipment sales and rental activities. The primary market for corporation G's services was Corporation A. Corporation G's lines of business and activities are consistent with the Articles of Incorporation and Bylaws of corporation A. It is stated that Corporation G expanded the healthcare ministry of Church A and Corporation A by providing operational and organizational support to the healing ministries of Corporation A by distributing health care products and providing graphic and printing support. It was submitted that Corporation G did not engage in a trade or business which was unrelated to the healthcare ministry of Church A and Corporation A under section 414(e)(2) of the Code.

It is represented that Corporation G was controlled by Corporation G-1 which was, in turn, controlled by Corporation A. Since the sole member of Corporation A was Church A, it is represented that Corporation G was indirectly controlled by Church A at all relevant times.

Corporation A, Hospital H, Entity K, Entity O, and Entity P are listed in Church A's Directory.

Corporation A sponsors three Welfare Plans (Plans T, U and V) for its employees and the employees of its

affiliates. Due to the administrative process used by the recordkeeper, data was not available, absent a manual analysis, to determine precise participation figures for the 1988 and 1989 plan years.

Plan T is a medical plan, as amended and restated, effective April 1, 1989. The following tax-exempt employers participate in, or have participated in, Plan T: Corporation A, Hospital H, Hospital J, Corporation C, Entity K, Entity M, Entity N and Entity P. The following for-profit employers participate in, or have participated in, Plan T: Corporation G, Corporation G-1, Corporation D and Partnership F.

Plan U, as amended and restated, effective April 1, 1989, is a flexible benefits plan within the meaning of section 125 of the Code. The following tax-exempt employers participate in, or have participated in, Plan U: Corporation A, Hospital H, Hospital J, Corporation C, Entity K, Entity M, Entity N, Entity O, Entity P and Entity Q. The following for-profit employers participate in, or have participated in, Plan U: Corporation G, Corporation G-1, Corporation D and Partnership F.

Plan V is a dental plan which was established effective January 8, 1988. The following tax-exempt employers participate in, or have participated in, Plan V: Corporation A, Hospital H, Hospital J, Corporation C, Entity K, Entity M, Entity N, Entity O, Entity P and Entity Q. The following for-profit employers participate in, or have participated in, Plan V: Corporation G, Corporation G-1, Corporation D and Partnership F.

With respect to Plans T, U, and V, the establishment date of each plan is the effective date for each plan as set forth above.

Corporation A also sponsors four Retirement Plans (Plans W, X, Y, and Z) for its employees and the employees of its affiliates. Due to the administrative process used by the recordkeeper, data was not available, absent a manual analysis, to determine precise participation figures for the 1988 and 1989 plan years.

Plan W is a defined benefit plan intended to qualify under section 401(a) of the Code, as amended and restated effective January 1, 1988. Plan W states that Corporation A is designated as the plan administrator, and it has been administered by Corporation A (or its Board of Directors). As of January 17, 1995, Plan W has been administered by the Pension Committee of Organization A. Plan W was the subject of a favorable determination letter dated May 9, 1990. The following tax-exempt employers participate in, or have participated in, Plan W: Corporation A, Hospital H, Hospital J, Entity K, Entity K-1, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C. The following for-profit employers participate in, or have participated in, Plan W: Corporation D, Corporation E, Corporation G, and Corporation G-1.

Plan X is a defined contribution plan intended to qualify under section 401(a) of the Code, effective April 1, 1988, and has been administered by Corporation A (or its Board of Directors). As of January 17, 1995, Plan X has been administered by the Pension Committee of Organization A. Plan X was the subject of a favorable determination letter dated April 16, 1990. The following tax-exempt employers participate in, or have participated in, Plan X: Corporation A, Hospital H, Hospital J, Entity K, Entity K-1, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C. The following for-profit employers participate in, or

have participated in, Plan X: Corporation D, Corporation E, Corporation G, and Corporation G-1.

Plan Y is a defined contribution plan intended to qualify under section 403(b)(9) of the Code, effective April 1, 1988, and, since that date, it had been administered by a State S not-for-profit corporation, a pension board, whose sole member was Corporation A. The pension board had been included in the tax-exempt organization group exemption letter dated October 19, 1988. Section 6.1 of Plan Y provides that the pension board shall have full power to construe and interpret Plan Y provisions and to perform those functions generally considered the duties of a plan administrator. Section 6.1 also states that the sole purpose of the pension board is to establish and maintain the plan. As of January 17, 1995, Plan Y has been administered by the Pension Committee of Organization A. The following tax-exempt employers participate in, or have participated in, Plan Y: Corporation A, Hospital H, Hospital J, Entity K, Entity K-1, Entity H, Entity N, Entity O, Entity P, Entity Q, and Corporation C. The following for-profit employers participate in, or have participated in, Plan Y: corporation D, Corporation E, Corporation G and Corporation G-1. Schedules submitted show a small number of employees of for-profit employers as participants in Plan Y; however, a representation was made that Plan Y benefits were accrued while these employees were employed by Code section 501(c)(3) tax-exempt entities controlled by Corporation A.

Plan Z is a defined contribution plan intended to qualify under section 403(b)(9) of the Code, effective April 1, 1988, as subsequently amended effective November 1, 1994. Plan Z had been administered by Corporation A. As of January 17, 1995, Plan Z has

been administered by the Pension Committee of Organization A. The following tax-exempt employers participate in Plan Z: Corporation A, Hospital H, and Corporation C. The following for-profit employers participate in, or have participated in, Plan Z: Corporation D and Corporation G-1. Schedules submitted show a small number of employees of for-profit employers as participants in Plan Z; however, a representation was made that Plan Z benefits were accrued while these employees were employed by Code section 501(c)(3) tax-exempt entities controlled by Corporation A.

On. January 17, 1995, Organization A's Board of Directors, in accordance with the Bylaws of Organization A, appointed members to the Pension Committee for the administration of the Retirement Plans of Corporation A. The. Bylaws of Organization A establish the Pension Committee for the administration of the Retirement Plans. Pursuant to Organization A's Bylaws, the members of the Pension Committee are appointed and may be dismissed jointly by the chairperson and president of Organization A, subject to the ratification by Organization A's Board of Directors. The members of the Pension Committee were appointed at the January 17, 1995 meeting of the Board of Directors of Organization A. The Pension Committee is controlled by an association of Church A and Church B through Organization A. On September 20, 1995, Organization A's Bylaws were amended to extend the formal responsibility of the Pension Committee to include the administration of the Welfare Plans. It is stated that the sole duty of the Pension Committee is to administer the Retirement Plans and Welfare Plans of Corporation A, and to employ agents, attorneys, accountants, actuaries or other persons as necessary or advisable to carry out the administration of the plans properly. It has been represented that the

Pension Committee began to administer the Retirement Plans and Welfare Plans as of January 17, 1995.

Prior to January 17, 1995, Plans W, X, and Z named Corporation A or its Board of Directors as plan administrator. In your submission dated August 22, 1995, documentation was furnished that indicates a retirement plan committee had been appointed by Corporation A as early as the 1991 plan year for the purpose of administering Plans W, X, and Z. It was represented that Corporation A's retirement plan committee constituted an organization, the principal purpose or function of which was the administration or funding of the retirement plans or programs for the employees of the entities which participated in Plans W, X, and Z for purposes of section 414(e)(3)(A) of the Code.

In your submission dated August 22, 1995, it is stated that the above-mentioned Corporation A retirement plan committee did not administer the Welfare Plans. However, it is represented that the Welfare Plans have been administered in fact by Organization A's Pension Committee since January 17, 1995, even though the formal amendment to the Bylaws of Organization A was not made until September 20, 1995, extending the responsibility of Organization A's Pension Committee to include the administration of the Welfare Plans.

In a letter dated June 3, 1997, the Service was informed that Corporation B (an organization controlled by Church B) and Organization A merged into Corporation A. The surviving corporation, Corporation A, adopted the Organization A Bylaws and modified its Articles of Incorporation to mirror Organization A's Articles of Incorporation. Corporation A then renamed itself Organization A. This transaction became effective as of January 1, 1997.

Rulings are requested as to whether the three Welfare Plans and the four Retirement Plans described above constitute "church plans" under section 414(e) of the Code from their respective establishment dates through December 31, 1996.

Section 414(e)(1) of the Code generally defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from taxation under section 501 of the Code.

Section 414(e)(2)(B) of the Code provides, in pertinent part, that the term "church plan" does not include a plan if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) or section 414(e)(3)(B), or their beneficiaries.

Under section 414(e)(3)(A) of the Code, a plan established for its employees by an employer which is not itself a church or a convention or association of churches but is associated with a church or a convention or association of churches will be treated as a church plan if it is maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

In pertinent part, section 414(e)(3)(B) of the Code provides that an "employee" of a church or a convention or association of churches shall include an employee of an organization, whether a civil law

corporation or otherwise, which is exempt from tax under section 501 of the Code, and which is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(C) of the Code provides that a church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B) of section 414(e)(3).

Section 414(e)(3)(D) of the Code provides that an organization, whether a civil law corporation or otherwise, is "associated" with a church or a convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

Section 414(e)(4)(A) of the Code provides that if a plan, intended to be a church plan, fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then that plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years. Section 414(e)(4)(C)(i) provides that the term "correction period" means the period ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the church plan requirements.

In order for an organization to have a church plan under section 414(e) of the Code, it must establish that its employees are employees or deemed employees of a church or a convention or association of churches under section 414(e)(3)(B) of the Code by virtue of the organization's affiliation with a church or a convention or association of churches. In addition, in the case of a

plan established by an organization that is not itself a church or a convention or association of churches, the plan must be maintained by an organization described in section 414(e)(3)(A) of the Code.

Corporation A is recognized to be exempt from tax under section 501(c)(3) of the Code. Corporation A controls Church A's health care institutions and programs. At all relevant times before January 17, 1995, Corporation A was controlled directly by Church A. The sole member of Corporation A was Church A, and, through its Church Council, Church A exercised certain reserved powers with respect to the organization and operation of Corporation A, including appointing all members of Corporation A's Board of Directors.

From January 17, 1995 through December 31, 1996, Church A and Church B are represented to constitute a "convention or association of churches" for purposes of section 414(e) of the Code. Corporation A, Corporation B, Hospital H, and Hospital I entered into a combination agreement to consolidate the health care activities of Church A and Church B. Pursuant to the terms of the combination agreement, Organization A became the sole corporate member of both Corporations A and B on January 17, 1995. As a result, the Board of Directors of Organization A appointed the Board of Directors of Corporation A and Corporation B, and these two boards were made to be overlapping. Hospital H retained Corporation A as its sole corporate member, and Hospital I retained Corporation B as its sole corporate member. In accordance with its Bylaws, Organization A was organized for religious, charitable, educational and scientific purposes including to promote, support, and perform the functions of Hospitals H and I and other organizations that support comprehensive health delivery systems, Church

A appointed 12 Members to Organization A and Church B appointed 12 Members to Organization A. These 24 Members, in turn, elected a Board of Directors composed of between 19 and 21 directors to manage Organization A. Church A and Church B have direct control of Organization A. Because the Board of Directors of Organization A appointed the members of the Boards of Directors of Corporations A and B, Organization A had direct control of Corporation A. Under these circumstances the association of Churches A and B had indirect control over Corporation A.

The following concerns the tax-exempt entities controlled either directly or indirectly by Corporation A:

During all relevant times, Corporation A was the sole member of Hospital H. As the sole member, Corporation A controlled Hospital H because Corporation A reserved the right to approve amendments to Hospital H's Articles of Incorporation and Bylaws, and to appoint and remove directors including the chairperson and vice chairperson. Corporation A and Hospital H were recognized to be exempt from tax under section 501(c)(3) of the Code in the October 19, 1988 letter ruling and the October 19, 1988 group exemption letter, respectively. Although Hospital H was a party to the aforesaid combination agreement, Hospital H retained Corporation A as its sole member and continued to be controlled by Corporation A in a manner analogous to a first-tier subsidiary of Corporation A. Prior to January 17, 1995, Hospital H was controlled indirectly by Church A through Corporation A. During the period from January 17, 1995 through

December 31, 1996, Hospital H was controlled indirectly by an association of Churches A and B, through Organization A's direct control of Corporation A.

Hospital H controlled Corporation C for the following reasons: Hospital H controlled corporation C, a tax-exempt entity under section 501(c)(3) of the Code, because Hospital H reserved substantial powers concerning amendment and approval of Corporation C's Articles of Incorporation and Bylaws, and the appointment of the chairperson and president of Corporation C. At least eight of Corporation C's 15 directors must be Hospital H's clinical division chairpersons. The president of Hospital H appoints the clinical division chairpersons, and Corporation A, in turn, appoints the president of Hospital H. During all relevant times Corporation C was indirectly controlled by Church A or an association of Churches A and B. Under these circumstances, Church A controlled Corporation C through Corporation A and Hospital H, and, after the combination agreement became effective on January 17, 1995, an association of Churches A and B indirectly controlled Corporation C through Organization A and Corporation A.

Hospital J was merged into Hospital H on December 31, 1991. Hospital J was listed in the group exemption letter dated October 19, 1988. Articles of Amendment to the Articles of Incorporation filed on June 30, 1988 named Entity K-1 as the sole member of Hospital J. Prior to that date, the sole member of Hospital J was Corporation A. Hospital J was controlled by a church at all relevant times by virtue of a church's control over either of its sole members, Entity K-1 or Corporation A. During all relevant years Church A or an association of Churches A and B indirectly controlled

Hospital J through Corporation A and later through Organization A.

Corporation A controlled either directly or indirectly the following not-for-profit corporations: Hospital H, Hospital J, Corporation C, Entity K-1, Entity L, Entity K, Entity M, Entity N, Entity O, Entity P, and Entity Q. All of the above not-for profit corporations were listed in the October 19, 1988 group exemption ruling letter, with the exceptions of Corporation C and Entity P which received separate favorable determinations as to their tax-exempt status under section 501(c)(3) of the Code. In addition, the following organizations are listed in the Church A Directory: Corporation A, Hospital H, Entity K, Entity O and Entity P.

Under these circumstances, all the tax-exempt not-for-profit corporations that have employees who participate in the Retirement Plans and Welfare Plans (Corporation A, Hospital H, Hospital J, Entity K, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C) are organizations that were directly or indirectly controlled by Church A, and, on and after January 17, 1995, were directly or indirectly controlled by an association of Churches A and B through Organization A. Under the principles of section 414(e)(3)(B) of the Code, the employees of Corporation A, Hospital H, Hospital J, Entity K, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C are employees of organizations which are exempt from tax under section 501 and which are controlled by or associated with a church or a convention or association of churches.

Therefore, in view of the stated purposes and activities of Church A and Organization A and their control of Corporation A, Hospital H, Hospital J, Entity K, Entity H, Entity N, Entity O, Entity P,

Entity Q, and Corporation C, we conclude that the employees of Corporation A, Hospital H, Hospital J, Entity K, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C are deemed employees of Church A prior to January 17, 1995, and, on or after that date, are deemed employees of an association of Churches A and B under section 414(e)(3)(B) of the Code for purposes of the church plan rules. Additionally, under the principles of section 414(e)(3)(C) of the Code, Church A or an association of Churches A and B is deemed the employer of employees of Corporation A, Hospital H, Hospital J, Entity K, Entity H, Entity N, Entity O, Entity P, Entity Q, and Corporation C, and therefore Church A or an association of Churches A and B is treated as the employer of those organizations' employees for purposes of the church plan rules of section 414(e) of the Code.

In addition, employees of certain for-profit entities participated in the Welfare Plans and the Retirement Plans. These for-profit entities include Corporation D, Corporation B, Partnership F, Corporation G, and Corporation G-1.

Information provided by your authorized representative in a letter dated September 18, 1998 shows that, for plan years 1990 through 1994, the number of participants in any Retirement Plan or Welfare Plan attributable to for-profit entities has always been an insubstantial portion of the overall number of participants in that Retirement Plan or Welfare Plan. Also, it is represented that, for the plan years 1995 and 1996, the overall number of participants in any Retirement Plan or Welfare Plan that continued to be used and the number of participants in that Retirement Plan or Welfare Plan attributable to for-profit entities would be approximately the same as for the plan years

1990 through 1994. Therefore, pursuant to section 414(e)(2)(B) of the Code, the Retirement Plans and Welfare Plans were maintained primarily for the benefit of church employees within the meaning of section 414(e)(1) or 414(e)(3)(B) of the Code, and the status of the Retirement Plans and Welfare Plans as church plans was not affected by the participation of these for-profit entities from the various dates of establishment of the Retirement Plans and Welfare Plans through December 31, 1996. Substantially all of the individuals included in each of the Retirement Plans or Welfare Plans were individuals described in section 414(e)(1) or section 414(e)(3)(B) of the Code, or their beneficiaries.

Having established that the employees of Corporation A, Hospital H, Hospital J,. Corporation C, Entity K, Entity M, Entity N, Entity O, Entity P, and Entity Q are deemed to be employees of Church A or an association of Churches A and B, the remaining issue is whether the retirement committees administering the Retirement Plans and the Welfare Plans were organizations controlled by or associated with a church or a convention or association of churches, the principal purpose or function of which is the administration or funding of a plan or program within the meaning of section 414(e)(3)(A) of the Code.

The Bylaws of Organization A establish the Pension Committee for the administration of the Retirement Plans of Corporation A. Pursuant to Organization A's Bylaws, the members of the Pension Committee are appointed by the chairperson and president of Organization A, acting jointly and subject to ratification by Organization A's Board of Directors. The members of the Pension Committee Were appointed at the January 17, 1995 meeting of the Board of Directors of

Organization A, and the Pension Committee of Organization A became the new committee that assumed the responsibility and function of administering the Retirement Plans and the Welfare Plans of Corporation A. The Pension Committee is controlled by an association of Church A and Church B through Organization A. On September 20, 1995, Organization A's Bylaws were amended to extend the formal responsibility of the Pension Committee to include the administration of the Welfare Plans. The sole duty of the Pension Committee is to administer the Retirement Plans and Welfare Plans of Corporation A, and to employ professionals or other persons as necessary to carry out the administration of the plans. Under these circumstances, the Pension Committee began to administer the Retirement Plans and Welfare Plans within the meaning of section 414(e)(3)(A) of the Code on January 17, 1995.

Plan Y had been administered from its effective date, April 1, 1988, until January 17, 1995, by a pension board, which was a State S not-for-profit corporation exempt from tax under section 501(c)(3) of the Code. The sole member of the pension board was Corporation A, which was, in turn, controlled by Church A. The sole purpose of the pension board was to establish and maintain Plan Y. Thus, Plan Y was maintained, prior to January 17, 1995, by the pension board, an organization whose principal purpose or function of which was the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, and such organization was controlled by a church or a convention or association of churches within the meaning of section 414(e)(3)(A) of the Code. As of January 17, 1995, the pension board's function of

administration of Plan Y was taken over by the Pension Committee of Organization A.

Prior to January 17, 1995, Plan W, Plan X and Plan Z were administered by a retirement plan committee appointed by Corporation A or its Board of Directors, as early as the 1991 plan year. Since the information submitted does not show whether the retirement plan committee was in existence when the plans were established, there may not have been a valid retirement plan committee in existence before 1991. However, the apparent defect in the administrative committee for Plans W, X and Z prior to 1991 was corrected in 1991 when the above-mentioned retirement plan committee was formed by Corporation A. By virtue of the power of appointment of Corporation A's Board of Directors, Corporation A controlled the retirement plan committee. Church A had direct control of Corporation A and indirect control of the retirement plan committee for purposes of section 414(e)(3)(A) of the Code for 1991 and years thereafter.

Under section 414(e)(4) of the Code, if a plan intended to be a church plan fails to meet one or more church plan requirements and corrects its failure within the statutorily-defined correction period, then the plan shall be deemed to meet the requirements of section 414(e) for the year in which the correction was made and for all prior years. In this case, the failure of Plans W, X and Z to satisfy the requirements of section 414(e)(3)(A) of the Code for years prior to 1991 was corrected within the correction period defined in section 414(e)(4)(C)(i), and Plans W, X and Z are deemed to meet the requirements of section 414(e)(3)(A) for the year in which the correction was made (1991) and for all prior years pursuant to section 414(e)(4)(A).

No information was submitted to show that the Welfare Plans were maintained prior to January 17, 1995 by an organization or committee whose principal purpose or function of which is the administration or funding of a plan or program for the provision of welfare benefits for the employees of a church or a convention or association of churches within the meaning of section 414(e)(3)(A) of the Code. However, it is represented that the Welfare Plans have been administered by the Pension Committee since January 17, 1995, even though Organization A's Bylaws were not amended until September 20, 1995, to extend the formal responsibility of the Pension Committee to include the administration of the Welfare Plans. In any event, the failure of the Welfare Plans (Plans T, U and V) to satisfy the requirements of section 414(e)(3)(A) of the Code for years prior to 1995 was corrected within the correction period defined in section 414(e)(4)(C)(i) of the Code, and the Welfare Plans are deemed to meet the requirements of section 414(e)(3)(A) of the Code for the year in which the correction was made (1995) and for all prior years pursuant to section 414(e)(4)(A).

Accordingly, we conclude that the Retirement Plans (Plans W, X, Y and Z) and the Welfare Plans (Plans T, U and V) qualify as church plans under section 414(e) of the Code from their respective establishment dates, as set forth above, through December 31, 1996.

This letter expresses no opinion as to whether Plans W and X satisfy the requirements for qualification under section 401(a) of the Code. The determination as to whether a plan is qualified under section 401(a) is within the jurisdiction of the appropriate Key District Director's office of the Internal Revenue Service. Similarly, this letter expresses no opinion as

to whether Plan Y and Plan Z meet the requirements of section 403(b) of the Code. Furthermore, this letter expresses no opinion as to whether Plans T, U, or V are cafeteria plans within the meaning of section 125 of the Code.

This letter expresses no opinion as to whether any organization referred to above is a "church plan" or a "qualified church-controlled organization" within the meaning of section 3121(w) of the Code.

This ruling letter was requested by Corporation A which sponsors the Retirement Plans and the Welfare Plans, and expresses no opinion with respect to any other employer participating in the plans under the church plan rules pertaining to plans maintained by two or more employers in section 1.414(e)-1(c) of the Income Tax Regulations.

The original and a copy of this letter have been sent to your authorized representatives in accordance with a power of attorney on file in this office.

Sincerely,

/s/ John G. Riddle, Jr.
John G. Riddle, Jr.
Chief, Employee Plans
Technical Branch 4

Enclosures:

Deleted copy of this letter

Notice of Intention to Disclose, Notice 437

ADVOCATE HEALTH CARE NETWORK PORTABLE PENSION PLAN

(As amended and restated effective as of January 1, 2009)

(Renamed as the "Advocate Health Care Network Pension Plan" effective January 1, 2010)

CERTIFICATE

I, Gail Hasbrouck, Secretary of the Advocate Health Care Network, hereby certify that the attached document is a correct copy of the Advocate Health Care Network Portable Pension Plan, as amended and restated effective as of January 1, 2009.

Dated this 11th day of December, 2009.

By /s/ Gail Hasbrouck
Secretary as Aforesaid
(Corporate Seal)

ADVOCATE HEALTH CARE NETWORK PORTABLE PENSION PLAN

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ADVOCATE HEALTH CARE NETWORK PORTABLE PENSION PLAN

(As Amended and Restated Effective as of January 1, 2009)

(Renamed as the "Advocate Health Care Network-Pension Plan" effective January 1, 2010)

ARTICLE 1
INTRODUCTION

1.1 History of the Plan; Effective Date. Advocate Health Care Network Portable Pension Plan (the "Plan") was established as the Evangelical Hospital Association Employees Pension Plan by Evangelical Hospital Association effective January 1, 1973 and was renamed as Evangelical Health Systems Corporation Employees Pension Plan effective July 1, 1983, at which time Evangelical Health Systems Corporation ("EHSC") became the Plan sponsor. The Plan was amended and restated in the form of a cash balance plan effective as of January 1, 1987. Effective January 1, 1997, EHSC and Advocate Health Care Network merged with and into Lutheran General Health System ("LGHS") and the resultant corporation was renamed as Advocate Health Care Network ("AHCN"). Effective as of December 31, 1998, the Lutheran General HealthSystem Basic Retirement Plan was merged into the Plan and the Plan was renamed as "Advocate Health Care Network Portable Pension Plan." The Plan was amended and entirely restated effective as of January 1, 1989, and amended from time to time thereafter. The Plan was further amended and restated effective as of January 1, 1997, and amended from time to time thereafter.

The following provisions constitute an amendment and entire restatement of the Plan generally effective

as of January 1, 2009 (the "Effective Date") to incorporate changes required by law and other administrative and clarifying changes and, effective January 1, 2010, to rename the Plan, the "Advocate Health Care Network Pension Plan."

1.2 Plan Objectives. The Plan is a defined benefit pension plan intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"). It is maintained by the Company in order to stimulate interest, initiate and increase efficiency and to provide retirement benefits to its Covered Employees and to Covered Employees of its Related Companies which adopt the Plan with the consent of the Company. The Plan is intended to be a church plan within the meaning of Code Section 414(e) and Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and, therefore, the Plan is intended not to be subject to the provisions of ERISA. The Company, and any committee appointed by the Company for purposes of administering the Plan in accordance with Section 10.1, shall take direction from the church through the Board of Directors of the Company or a committee appointed by the Board of Directors of the Company with respect to issues related to Plan administration.

1.3 Pension Fund. The assets of the Plan are held and invested by one or more Trustees and may be held and invested by one or more investment managers or insurance institutions acting and appointed for such purposes in accordance with the Pension Fund, as described in Section 14.2, which implements and forms a part of the Plan.

1.4 The Employers. With the consent of the Company, the Plan may be adopted in accordance with Section 12.2 by any Related Company for the benefit

of its Covered Employees. With the consent of the Company, the Plan may be adopted in accordance with Section 12.2 by any member of a joint venture of which the Company is at least a 50 percent owner.

1.5 Supplements. Supplements to this Plan may be adopted from time to time and will be attached to and form a part of the Plan. The provisions of any such supplements shall be given the same effect that such provisions would have if they were incorporated within the basic text of the Plan. Supplements may modify or supplement provisions of the Plan as they apply to particular groups of Participants. Each supplement will specify the persons affected and shall supersede the other provisions of the Plan to the extent necessary to eliminate inconsistencies between the Plan provisions and the provisions of such supplement. The terms used in such supplements shall have the same meanings as those terms have for all other purposes under the Plan and all provisions of the Plan not inconsistent with such supplements will continue to apply to the persons affected by such supplements.

1.6 Benefits for Participants Who Terminated Employment Prior to January 1, 2009. The benefits provided hereunder with respect to any Participant who retired or terminated employment prior to the Effective Date will, except as otherwise specifically provided herein, be governed in all respects by the terms of the Plan as in effect on the date of the Participant's retirement or other termination of employment.

ARTICLE 2
DEFINITIONS

Each capitalized term in the Plan is defined in this Article 2 or in the Supplement in which is first appears. All such defined terms shall have the

meanings set out in this Article or the Supplement in which they first appear, unless the context clearly indicates another meaning.

2.1 Accrued Benefit. Except as otherwise provided in an applicable Supplement, the term "Accrued Benefit" means, as of any determination date, an annual amount of benefit, payable in the form of a single life annuity as of the Participant's Normal Retirement Date, determined in accordance with Article 5.

2.2 Administrative Committee. The term "Administrative Committee" means the Benefit Plan Administrative Committee for Church Plans as appointed by the Compensation Committee.

2.3 Advocate Companies. The term "Advocate Companies" includes the Employers, and all Related Companies that have not adopted the Plan (and each such business entity is sometimes referred to herein individually as an "Advocate Company"). Any business entity which is not an Employer and which does not qualify as a Related Company, but is a member of a controlled group of corporations (within the meaning of Code Section 1563(a), determined without regard to Sections 1563(a)(4) and 1563(e)(3)(C) thereof) or a member of a trade or business under common control (within the meaning of Code Section 414(c)) which contains an Employer, or a member of an affiliated service group (as defined in Code Section 414(m)) which contains an Employer, shall, for purposes of the Plan, be considered as a Related Company that has not adopted the Plan. For purposes of Article 9 with regard to the preceding sentence, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" in Code Section 1563(a)(1), including where Code Section 1563(a) is incorporated in Code Sections 414(b) and (c).

2.4 Annuity Commencement Date. The date as of which the initial payment of Retirement Income or Deferred Vested Benefit (as defined in Section 6.1) to which a Participant is entitled under the Plan is payable.

2.5 Beneficiary. The term "Beneficiary" means the person(s) designated in accordance with Section 7.13 to receive any death benefits that may be payable under the Plan upon the death of a Participant.

2.6 Board of Directors. The term "Board of Directors" means the board of directors of the Company.

2.7 Break in Service. A "Break in Service" shall occur on the last day of any Plan Year during which a terminated Employee fails to complete more than 500 Hours of Service.

2.8 Company. The term "Company" shall mean Advocate Health Care Network with respect to Plan Years commencing on or after January 1, 1997 and shall mean Evangelical Health Systems Corporation with respect to Plan Years commencing prior to January 1, 1997.

2.9 Covered Employee. The term "Covered Employee" means an Employee of an Employer excluding:

(a) Any person not reported as an. Employee by any Employer under the Plan on its payroll records, even if a court or administrative agency subsequently determines that such person is an Employee (or a Leased Employee deemed to be an Employee) of the Company or of any business entity required to be aggregated with the Company under Code Section 414(b), (c), (m) or (o);

(b) Any Employee covered under a collective bargaining agreement between the Employer and

such Employee's collective bargaining representative which does not provide for his participation in the Plan;

(c) Any Leased Employee deemed to be an Employee of an Employer or of any other business entity required to be aggregated with an Employer under Code Section 414(b), (c), (m) or (o);

(d) Any Employee designated as grandfathered clergy (who performed services at a Lutheran General Health Care System location) for whom an Employer makes a contribution to a denominational retirement plan;

(e) Any Employee designated by the Employer as a hospital-based physician (including, without limitation, any radiologist, emergency-room physician, pathologist and anesthesiologist); provided, however, that:

(1) Effective on and after January 1, 1990, any Employee who is employed as a staff physician at South Chicago Community Hospital shall be deemed a Covered Employee;

(2) Effective on and after January 1, 1993, any Employee who is employed by an Employer as a physician (other than by ESC in its Field Medical Group operations or by AHHC in its Ravenswood Hospital operations) and who did not on or before December 31, 1993 irrevocably elect not to participate in the Plan, shall be deemed a Covered Employee;

(3) Effective on and after January 1, 1994, any Employee who (1) is employed by an Employer as a physician (other than by ESC in its Field Medical Group operations or by AHHC in its

Ravenswood Hospital operations), (2) irrevocably elected on or before December 31, 1993 not to participate in the Plan and (3) irrevocably agreed to suspend his participation in the Evangelical Health Systems Corporation Deferred Compensation Plan effective December 31, 1993, shall be deemed a Covered Employee; and

(4) Effective on and after October 1, 2000, any Employee who is employed as a physician by AHHC in its Ravenswood Hospital operations shall be deemed a Covered Employee;

(f) Any Employee employed by an Employer as a medical resident or a dental resident; provided, however, that effective for the period commencing with the merger as of December 31, 1998 of the LGHS Plan with this Plan and ending June 30, 2000, any Employee employed as a medical resident by Advocate Health and Hospitals Corporation in its Advocate Lutheran General Hospital operations shall be deemed a Covered Employee;

(g) Any Employee of Dreyer Clinic, Inc. or any subsidiary thereof and any Employee of Dreyer Medical Group, Ltd.;

(h) Effective on and after December 17, 1986, any Employee designated by the Employer as being employed on a cost-per-call basis ("cost-per-call Employee");

(i) Effective on and after January 1, 1989, any Employee of the Extended Care division of Evangelical Hospitals Corporation ("EHC") or any successor thereto;

(j) Effective for the Plan Year commencing January 1, 1989 and ending December 31, 1989,

any Employee of the South Chicago Community Hospital division of EHC who was participating in the Pension Plan for South Chicago Community Hospital Employees with respect to such period;

(k) Effective for the period commencing January 1, 1998 and ending with the merger of the Lutheran General HealthSystem Basic Retirement Plan (the "LGHS Plan") into this Plan as of December 31, 1998, any Employee of Evangelical Services Corporation ("ESC") or any subsidiary thereof who is assigned to ESC's lithotripsy services business or to the employer survey business of ESC or of any subsidiary of ESC; and

(l) Effective for the period beginning on December 1, 2008 and ending on December 31, 2008, former employees of Condell Medical Center, Condell Health Network, Condell Health Care Foundation, Lake County Community Service Corporation, Medical Center Enterprises, Inc. and Medical Center Properties, Inc. (collectively, "Condell") who become Employees of the Advocate Companies effective December 1, 2008, except to the extent that such Employees (i) are cross-employed by both Condell and the Advocate Companies on November 30, 2008, and (ii) continue in such cross-employment status effective December 1, 2008 (applying the Company's current administrative practices for such determinations).

(m) Effective on and after the "Effective Date" (as defined in the Agreement and Plan of Merger, dated as of October 23, 2009, by and among BroMenn Healthcare System, BroMenn Healthcare Hospitals, BroMenn Foundation and Advocate Health and Hospitals Corporation and. Advocate Charitable Foundation, (i) former employees of BroMenn Healthcare

System, BroMenn Healthcare Hospitals, BroMenn Foundation, BroMenn Physician Management Corporation (d/b/a BroMenn Medical Group and Illinois Heart and Lung Associates), and Management Systems for Health Care (collectively, the "BroMenn Companies") and (ii) any employees hired by the Advocate Companies on or after the Effective Date to perform services for the Advocate Companies at any location where the former BroMenn Companies operated.

2.10 Deferred Retirement Date. A Participant's "Deferred Retirement Date" will be the first day of the calendar month coincident with or next following the date of his retirement from the employ of all of the Advocate Companies after his Normal Retirement Date.

2.11 Disability Date. A Participant's "Disability Date" will be the date of his retirement from the employ of all the Advocate Companies as a result of his Permanent Disability, provided such. Participant has completed five Years of Vesting Service.

2.12 Earnings. For purposes of the Plan, "Earnings" means total, regular cash compensation paid to an Employee for services rendered to the Employers as a Covered Employee, including overtime pay, bonuses, parsonage housing allowances, and incentive compensation; provided, however, Earnings shall include amounts paid to a Participant (including the cash out of any accrued but unused paid time off or vacation) by the later of (i) 2 ½ months after severance from employment (even if paid in the year following severance from employment) and (ii) the end of the calendar year that includes the date of severance from employment. The following shall be excluded from the definition of Earnings:

(a) Any amounts contributed by the Employers for the Participant's benefit to the Plan or any other profit sharing, pension, stock bonus, or other retirement or benefit plan maintained by the Employers; provided, however, any amounts contributed under a salary reduction arrangement and which are not includible in the gross income of the Participant under Code Sections 403(b), 401(k), and 125, effective for Plan Years beginning on and after January 1, 2001, Code Section 132(f)(4), and effective on or after January 1, 2002, Code Section 457(b), shall be considered a part of Earnings;

(b) Any reimbursements for travel expenses, relocation allowances, educational assistance allowances, awards and other special allowances; provided, however, executive benefit allowances, cash awards as designated by the Administrative Committee, and special recognition awards shall be considered a part of Earnings.

(c) Any amounts included in taxable income under any group insurance program;

(d) Any severance pay paid as a result of the Participant's termination of employment with any Advocate Company;

(e) Any compensation paid or payable to the Participant, or to any governmental body or agency on account of the Participant, under the terms of any state, federal or foreign law requiring the payment of such compensation because of the Participant's voluntary or involuntary termination of employment with any Advocate Company; and

(f) Any special non-recurring bonuses and other similar special non-recurring payments made to Participants which are designated by the

Administrative Committee as not being included in Earnings.

(g) For years beginning after December 31, 1988 and before January 1, 1994, the annual compensation of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed $200,000, adjusted as provided by the Commissioner at the same time and in the same manner as under Code Section 415(d), except that the dollar increase in effect on January 1 of any calendar year is effective for Plan Years beginning in such calendar year and the first adjustment to the $200,000 limitation is effective on January 1, 1990.

(h) For years beginning on or after January 1, 1994, the annual compensation limit of each Participant taken into account for determining all benefits provided under the Plan for any determination period shall not exceed $150,000, as adjusted for the cost-of-living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12; notwithstanding the foregoing and as provided in Treasury Regulation Section 1.401(a)(17)-1(b)(3), no proration is required merely because the Plan formula provides that the accrual for each Employee is based on compensation for the portion of the Plan Year during which the Employee is a Participant, or

because an Employee is covered under the Plan for less than a full Plan Year provided that benefit accruals are otherwise determined using compensation for a period of at least 12 months. If compensation for any prior determination period is taken into account in determining a Participant's benefits for the current Plan Year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. For this purpose, in determining benefits in Plan Years beginning after December 31, 1988, the annual compensation limit in effect for determination periods beginning prior to that date is $200,000. In addition, in determining benefits in Plan Years beginning on or after January 1, 1994, the annual compensation limit in effect for determination periods beginning before that date is $150,000. In determining the compensation of a Participant for purposes of this limitation, for Plan Years beginning before January 1, 1997 the rules of Section 414(q)(6) as then in effect shall apply, except in applying such rules, the term "family" shall include only the spouse of the Participant and any lineal descendants of the Participant who have not attained age 19 before the close of the year. If, as a result of the application of such rules the adjusted $200,000 or $150,000 limitation (as applicable) is exceeded, then (except for purposes of determining the portion of compensation up to the integration level if this Plan provides for permitted disparity), the limitation shall be prorated among the affected individuals in proportion to each such individual's compensation as determined under this Section prior to the application of this limitation.

(i) Notwithstanding the foregoing, the annual compensation of each Participant taken into account

in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed $200,000 (as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B), which limit shall be $245,000 in 2009).

2.13 Early Retirement Date. The first day of the calendar month coincident with or next following the date of his retirement from the employ of all of the Advocate Companies before his Normal Retirement Date, but after he has both attained age 55 years and completed five Years of Vesting Service.

2.14 Effective Date. The term "Effective Date" means January 1, 2009.

2.15 Eligibility Service. "Eligibility Service" shall mean the period of service considered in the determination of a Participant's eligibility for participation in the Plan, calculated in accordance with Article 3.

2.16 Eligible Spouse. The term "Eligible Spouse" is defined in Section 6.3.

2.17 Employee. The term "Employee" means each common law employee of an Employer excluding any person who is subject to an independent contractor relationship with an Employer. If an individual is classified as an independent contractor and is later reclassified as a common-law employee for wage and hour purposes, such individual shall be an Employee as of the date of his or her reclassification on a prospective basis only.

2.18 Employer. The term " Employer" includes the Company and any Related Companies (including joint ventures) that adopt the Plan in accordance with Article 12.

2.19 Employment Termination Date. The "Employment Termination Date" of a Participant whose employment with all of the Advocate Companies terminates before he qualifies for retirement on a Retirement Date means the date his employment with all of the Advocate Companies is terminated.

2.20 Entry Date. Effective for Plan Years commencing after December 31, 1995, the first day of the first pay period commencing after the date on which the Employee is both a Covered Employee and has completed one Year of Eligibility Service (as defined in Section 3.2). Effective for Plan Years commencing prior to January 1, 1996, the first day of the calendar quarter coincident with or next following the date on which the Employee is both a Covered Employee and has completed one Year of Eligibility Service (as defined in Section 3.2).

2.21 415 Compensation. The term "415 Compensation" shall have the meaning set forth under Code Section 415(c)(3) and Treasury Regulations Section 1.415(c)-2; provided, however, a Participant's 415 Compensation shall include payments made after severance from employment from the Advocate Companies that: (A) are made by the later of 2 1/2 months after severance from employment or the end of the limitation year that includes the date of severance from employment, and (B) absent a severance from employment, would have been paid to the Participant while the Participant continued in employment with the Advocate Companies and are regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar

compensation as permitted in accordance with Treasury Regulations Section 1.415(c)-2(e)(3).

2.22 Highly Compensated Employee. The term "Highly Compensated Employee" means, effective for Plan Years on or after January 1, 1997, certain active Covered Employees and certain former Covered Employees of an Employer as provided under subsections (a) through (c) below, and subject to subsections (d) through (f):

(a) An active Covered Employee is a Highly Compensated Employee if he:

(1) Was a 5-percent owner (as defined in Code Section 416(i)(1)) of the Employer at any time during the Plan Year or the preceding Plan Year, or

(2) For the preceding Plan Year, had 415 Compensation from the Employer in excess of $110,000 (as adjusted by the Secretary of the Treasury in accordance with Code Section 415(d)).

(b) The Company reserves the right to make an election to use the "top-paid group" of Employees to limit the number of Employees as described above. For this purpose, an Employee is in the "top-paid group" for any Plan Year if such Employee is in the group consisting of the top 20% of the Employees when ranked on the basis of 415 Compensation paid during such Plan Year.

(c) A former Covered Employee shall be treated as a Highly Compensated

Employee if he:

(1) Was a Highly Compensated Employee when he separated from service, or

(2) Was a Highly Compensated Employee at any time after attaining age 55.

(d) In determining whether an Employee is a Highly Compensated Employee for Plan Years beginning in 1997, the amendments to Code Section 414(q) stated above are treated as having been in effect for Plan Years beginning in 1996.

(e) With respect to Plan Years commencing prior to January 1, 1998, this determination will be made without regard to Code Sections 125, 402(e)(3) and 402(h)(1)(B) and, in the case of employer contributions made pursuant to a salary reduction agreement, without regard to Code Section 403(b).

(f) Notwithstanding the foregoing, the determination of who is a Highly Compensated Employee, shall be made in accordance with Code Section 414(q) and the regulations issued thereunder.

2.23 Hours of Service. With respect to any Employee of the Advocate Companies, the term "Hour of Service" means:

(a) Each hour for which an Employee is directly or indirectly compensated or entitled to be compensated for the performance of duties for any Advocate Company as an Employee (with each overtime hour being taken into account as if it were a normal work hour);

(b) Each hour for which an Employee is directly or indirectly compensated or entitled to be compensated by an Advocate Company with respect to a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacitation (including disability), layoff,

jury duty, military duty or Leave of Absence; provided, however, no more than 501 Hours of Service shall be credited on account of any single continuous period during which no duties are performed (except as provided in Section 5.8);

(c) Each other hour required by federal law to be counted as an "Hour of Service," including each such hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by an Advocate Company; provided, however, that not more than 501 Hours of Service shall be credited for payments of back pay, to the extent that such back pay is awarded for a period of time during which the Employee did not or would not have performed duties as an Employee; and

(d) Each hour for which an Employee is on a maternity or paternity leave of absence in accordance with Section 2.23(b), but only for purposes of preventing the Employee from incurring a one-year Break in Service and only if the Employee timely furnishes to the Plan Administrator such information as it may reasonably require to establish that his absence from work was due to a maternity or paternity leave of absence as defined in Section 2.23(b) and the number of days for which there was an absence; provided, however, that not more than 501 Hours of Service shall be credited by reason of a maternity or paternity leave of absence.

(e) Compensated hours described in paragraph (b) above shall be determined by multiplying the number of scheduled work days during the applicable period for which the Employee is compensated by the number of hours in the average scheduled work day (based on the scheduled work week for his job classification then in effect, provided however,

that in the case of an Employee without a regular work schedule, such hours shall be computed on the basis of a 40 hour work week). Hours described in paragraph (d) next above for Employees on maternity or paternity leave of absence shall be determined in the same manner as compensated hours described in paragraph (b) next above.

(f) In determining Hours of Service, hours shall be credited for the period in which such duties were performed (regardless of when payment is due) or for which such compensation was paid and for this purpose the rules for crediting Hours of Service set forth in Section 2530.200b-2 of the Department of Labor regulations are hereby incorporated by reference; provided that Hours of Service credited under paragraph (d) next above for a maternity or paternity leave of absence shall be credited to the year in which such leave begins if such hours are required to prevent a one-year Break in Service from occurring in such year, or if not so required in that year, such hours shall be credited in the immediately following year. In construing the foregoing provisions of this Section, ambiguities shall be resolved in favor of crediting Employees with Hours of Service.

(g) Special Rules for Hours of Services.

(1) If a Participant completed Hours of Service with an Advocate Company that has not adopted the Plan or if a Participant has Hours of Service with an Advocate Company before it adopted the Plan, then such Hours of Service with such Advocate Company (exclusive of Hours of Service prior to the date it became an Advocate Company, unless otherwise required by law or specified by

the Plan) will be considered Hours of Services in determining Vesting Service under Section 4.2.

(2) With regard to a Covered Employee who also performs services for an Employer as a Leased Employee or cost-per-call Employee, Hours of Service performed as a Leased Employee and Hours of Service performed as a cost-per-call Employee after December 17, 1986, shall not be taken into account in determining such Covered Employee's Eligibility Service under Section 3.2, Vesting Service under Section 4.2, and benefit accrual under Section 5.1.

(3) Notwithstanding the foregoing, with regard to Employees who were employed by the Child Sexual Abuse Treatment & Training Center of Illinois, Inc. ("CSATC") immediately prior to the merger of CSATC with Evangelical. Hospitals Corporation ("EHC") on December 16, 1987 (the "CSATC merger date"), and who continued in employment with EHC immediately after the merger, Hours of Service performed after such Employee's date of hire by CSATC and prior to the CSATC merger date, in addition to Hours of Service performed for the Advocate Companies on and after the CSATC merger date, will be considered Hours of Service with an Advocate Company for purposes of determining each such Employee's Eligibility Service under Section 3.2, Vesting Service under Section 4.2, and benefit accrual under Section 5.1; provided that, such Employee will accrue a benefit during Plan Years after his date of hire by the CSATC and prior to the CSATC merger date only if, had such Employee been a Covered Employee during such period, he would

have accrued a benefit under the terms of the Plan.

(h) Service with Predecessor Companies. Unless otherwise specified in the Plan or by the Company, for purposes of determining an Employee's Hours of Service for Eligibility Service under Section 3.2, Vesting Service under Section 4.2, and benefit accrual under Section 5.1, or any other purpose under the Plan, an Employee will not be credited with any Hours of Service with a Predecessor Company prior to such Predecessor Company becoming an Advocate Company.

(1) Service Performed by Person Not an Employee. Service performed by any person during a period for which he is not reported as an Employee by any Advocate Company on its payroll records shall not be taken into account under the Plan for any purpose; provided that even if a court or administrative agency subsequently determines that such person is an Employee (or a Leased Employee deemed to be an Employee) of an Advocate Company, his service on and after the date on which he is reclassified as an Employee and prior to the date he becomes a Covered Employee shall be recognized for purposes of Eligibility Service and Vesting Service under the Plan but not for benefit accrual under Section 5.1.

2.24 Investment Committee. The term "Investment Committee" means the Pension Investment Committee as appointed by the Finance Committee.

2.25 Leased Employee. Any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person

(the "leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under the primary direction or control of the recipient. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. A Leased Employee shall not be considered an Employee of the recipient if such Employee is covered by a money purchase pension plan which is maintained by the leasing organization and meets the requirements of Code Section 414(n)(5)(B) and Leased Employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

2.26 Leave of Absence. A "Leave of Absence" means:

(a) A leave of absence required by law or granted by an Advocate Company on account of service in military or governmental branches described in any applicable statute granting reemployment rights to Employees who enter such branches, or any other military or governmental branch designated by the Company

(b) A leave of absence for any period the Employee is absent from work by reason of the Employee's pregnancy, the birth of the child of the Employee, the placement of a child with the Employee in connection with the adoption of the child by the Employee or the caring for the child for a period beginning immediately after such birth or placement; and

(c) Any other absence from active employment with an Advocate Company that is approved by

such Advocate Company and not treated by it as a termination of employment.

Leaves of absence granted by an Advocate Company will be governed by rules uniformly applied to all Employees of that Advocate Company similarly situated.

2.27 Normal Retirement Age. A Participant's "Normal Retirement Age" is age 65.

2.28 Normal Retirement Date. A Participant's "Normal Retirement Date" is the first day of the calendar month coincident with or next following the date he or she attains Normal Retirement Age. A Participant will be fully vested in his normal retirement benefit upon attaining Normal Retirement Age.

2.29 Participant. The term "Participant" means any person who has been admitted to, and has not been removed from, participation in the Plan pursuant to the provisions of Article 3. "Participant" shall include active Participants and former Employees who have an Accrued Benefit under the Plan.

2.30 Permanent Disability. A Participant shall be considered to have incurred a "Permanent Disability" for purposes of the Plan if he is determined to be disabled for purposes of receiving long term disability benefits under the Company's Disability Income Protection Plan or is certified as disabled by the Social Security Administration.

2.31 Plan Administrator. The "Plan Administrator" means the Administrative Committee, as described in Section 10.3.

2.32 Plan Year. The Plan Year is the 12-month period beginning each January 1 and ending the following December 31.

2.33 Predecessor Company. A "Predecessor Company" means any corporation or other entity the stock, assets or business of which was acquired by an Advocate Company prior to the Effective Date or is acquired by an Advocate Company on or after the Effective Date, whether by merger, consolidation, purchase of assets or otherwise, and any predecessor thereto designated by the Company.

2.34 Related Company. The term "Related. Company" includes any business entity (i) controlled by the Company or more than 50 percent of the ownership interest of which is directly or indirectly owned by the Company, and (ii) more than 50 percent of the ownership interest of which is directly or indirectly owned by any business entity or any person or group of persons who directly or indirectly own more than 50 percent of the ownership interest of the Company.

2.35 Retirement Date. Reference to the "Retirement Date" includes a Normal Retirement Date, a Deferred Retirement Date, an Early Retirement Date or a Disability Date, whichever is applicable to a Participant.

2.36 Retirement Income shall mean monthly payments payable to a Participant or Beneficiary under the terms of the Plan.

2.37 Trust Agreement. The term "Trust Agreement" mean each agreement entered into between the Company and a Trustee governing any fund maintained for the purposes of holding Plan assets.

2.38 Trustee. The term "Trustee" or "Trustees" means the party or patties so designated from time to time pursuant to a Trust Agreement.

2.39 Vesting Service. "Vesting Service" shall mean the period of service considered in the determination of a Participant's eligibility for nonforfeitable benefits under the Plan, calculated in accordance with Article 4.

ARTICLE 3
ELIGIBILTY AND PARTICIPATION

3.1 Eligibility. Each Employee of an Employer who was a Participant in the Plan immediately prior to the Effective Date shall continue to be a Participant in the Plan on and after the Effective Date in accordance with the terms of the Plan. An Employee who was not a Participant in the Plan immediately prior to the Effective Date shall become a Participant on the first Entry Date as of which he is both a Covered Employee and has completed one Year of Eligibility Service.

3.2 Eligibility Service. Subject to Article 8, an Employee shall be credited with one "Year of Eligibility Service" if he is employed by the Advocate Companies for a consecutive twelve month period and he completes 1,000 or more Hours of Service within such twelve consecutive month period, or, if such Employee does not complete 1,000 Hours of Service during such twelve-month period, he shall be credited with one Year of Eligibility Service if he completes 1,000 or more Hours of Service during any Plan Year following such date.

3.3 Cessation of Participation. Once an Employee becomes a Participant in the Plan in accordance with Section 3.1 above, such Employee shall remain a Participant in the Plan until the date that the

Participant's entire Accrued Benefit has been distributed to the Participant or on behalf of such Participant in accordance with the Plan. In the case of a Participant who terminates service with the Advocate Companies and is not eligible for a Deferred Vested Benefit in accordance with Section 6.1, such Participant shall be deemed to have his entire Accrued Benefit distributed to him on such termination date. The participation of an Employee who, without a termination of service, ceases to be a Covered Employee shall not cease on account thereof but, notwithstanding anything contained herein to the contrary, Hours of Service performed while not a Covered Employee shall be disregarded for purposes of Section 5.1.

3.4 Qualified Military Service. Effective December 12, 1994, and notwithstanding any provisions of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). Effective on and after January 1, 2007, for a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), such Participant's Beneficiaries are entitled to additional benefits (other than accruals relating to a period of qualified military service) provided under the Plan and any applicable Supplements as if the Participant had resumed and then terminated employment on the date of his or her death as provided under Code Section 401(a)(37). Also, effective on and after January 1, 2009, any Employee receiving wage differential payments as defined in Code Section 414(u)(12)(A) shall be treated as a Participant and the differential wage payments shall be treated as Earnings.

3.5 Termination While on Leave of Absence. A Participant who is entitled to Retirement Income upon

his termination of employment with the Advocate Companies may retire or terminate employment without returning to active employment with the Advocate Companies, if he is absent from work because of a Leave of Absence or, if he is a member of a group of Employees covered by a collective bargaining agreement which extends the Plan to such group, during a period his seniority with the Advocate Companies (as determined under such agreement) has not terminated.

3.6 Concurrent Employment. A period of concurrent employment with two or more Advocate Companies will be considered as employment with only one of them during that period.

3.7 Leave of Absence. A Leave of Absence will not interrupt continuity of employment for purposes of the Plan.

3.8 Determination of Bases of Benefits. A Participant's Hours of Service, Vesting Service, Earnings and any other factor relating to benefits payable to him under the Plan shall be determined by the Plan Administrator pursuant to the terms of the Plan on the basis of the records of the Advocate Companies and on the basis of reasonable estimates where such records are not sufficient to provide all required data and information.

ARTICLE 4
VESTING SERVICE

4.1 Vested Interest. A Participant shall be one hundred percent (100%) vested in his Accrued Benefit upon the earliest of:

(a) the Participant being credited with five (5) Years of Vesting Service;

(b) the Participant's attainment of Normal Retirement Age while employed as an Employee of an Advocate Company;

(c) the Participant's death while employed as an Employee of an Advocate Company; and

(d) the Participant incurring a Permanently Disability while employed as an Employee of an Advocate Company.

4.2 Vesting Service. Subject to the provisions of Article 8, an Employee will be granted one "Year of Vesting Service" for each Plan Year in which he completes 1,000 or more Hours of Service. In addition to being credited with Vesting Service earned after the Effective Date in accordance with the foregoing sentence, a Participant who was a Participant in the Plan immediately prior to the Effective Date will be credited with Years of Vesting Service equal to the Years of Vesting Service to which he was entitled immediately prior to the Effective Date, as determined in accordance with the terms of the Plan as in effect immediately prior to that date.

ARTICLE 5

RETIREMENT INCOME

5.1 Accrual of Annuity Amounts.

(a) General Rule. A Participant will accrue an "Annuity Amount" as determined below for each Plan Year, commencing on or after January 1, 1987, during which he completes 1,000 or more Hours of Service as a Covered Employee.

(b) Special Rule for First 12 Months of Employment. Subject to Article 8, if a Participant meets the Plan eligibility requirements of Section 3.1 within the first twelve months of employment with an

Employer, the Participant will accrue an Annuity Amount as determined below in the Plan Year in which he is hired with an Employer even if he completes less than 1,000 Hours of Service during such year of hire.

(c) Special Rule for Accruing Benefit in Plan Year of Termination of Employment. Notwithstanding Section 5.1(a) above, an active vested Participant will accrue an Annuity Amount for the Plan Year in which he terminates employment with an Employer if he completes at least one Hour of Service as a Covered Employee for such Plan Year.

(d) Crediting of Annuity Amounts for Plan Years Beginning Prior to January 1, 1996. Effective for Plan Years commencing on or after January 1, 1987 and prior to January 1, 1996, a Participant who completes 1,000 Hours of Service during the Plan Year (i) shall be credited as of the last day of any calendar quarter coincident with or next following the date on which he completes 1,000 Hours of Service during the Plan Year with the Annuity Amount which he has accrued during such calendar quarter and any other prior calendar quarter or quarters of such Plan Year, and (ii) shall be credited as of the last day of each calendar quarter thereafter that falls within such Plan Year with the Annuity Amount which he has accrued during such calendar quarter.

(e) Crediting of Annuity Amounts for Plan Years Beginning On or After January 1, 1996. Effective for Plan Years commencing on or after January 1, 1996, a Participant who completes 1,000 Hours of Service during the Plan Year (i) shall be credited as of the last day of any pay period coincident with or next following the date on which he completes 1,000

Hours of Service during the Plan Year with the Annuity Amount which he has accrued during such pay period and any other prior pay period or pay periods of such Plan Year, and (ii) shall be credited as of the last day of each pay period thereafter that falls within such Plan Year with the Annuity Amount which he has accrued during such pay period.

5.2 Annuity Amount. For each Plan Year in which a Participant is eligible for an Annuity Amount under Section 5.1, the Participant shall accrue an Annuity Amount equal to the following:

(a) Plan Years Beginning On and After January, 1, 1987 but Before January 1, 1989. For Plan Years beginning on or after January 1, 1987 but before January 1, 1989.

(1) 3 percent of his Earnings up to 50 percent of the Social Security taxable wage base in effect for such Plan Year, plus

(2) 8 percent of his Earnings in excess of 50 percent of the Social Security taxable wage base in effect for such Plan Year up to the Code Section 401(a)(17) limit, divided by

(3) the appropriate actuarial factor as stated in Supplement A.

(b) Plan Years Beginning On and After January 1, 1989 but Before January 1, 1996. For Plan Years beginning on or after January 1, 1989 but before January 1, 1996:

(1) 3.5 percent of his Earnings up to 50 percent of the Social Security taxable wage base in effect for such Plan Year, plus

(2) 7 percent of his Earnings in excess of 50 percent of the Social Security taxable wage base in effect for such Plan Year up to the Code Section 401(a)(17) limit, divided by

(3) the appropriate actuarial factor as stated in Supplement A.

(c) Plan Years Beginning On or After January 1, 1996. For Plan Years beginning on or after January 1, 1996:

(1) 5 percent of his Earnings up to 85 percent of the Social Security taxable wage base in effect for such Plan Year, plus

(2) 7 percent of his Earnings in excess of 85 percent of the. Social Security taxable wage base in effect for such Plan. Year up to the Code Section 401(a)(17) limit, divided by

(3) the appropriate actuarial factor as stated in Supplement A.

(d) Special Rule for 2003. Effective December 31, 2003, each Participant who has an Annuity Commencement Date on or after January 1, 2004 shall receive an additional increase in accruals determined under Section 5.1 for 2003 equal to the difference between the 2003 increase credited pursuant to Sections 5.1, 5.2 and 5.3 and the increase that would have been credited under Sections 5.1, 5.2 and 5.3 if the Treasury Bill Rate was equal to three percent (3%) for 2003.

5.3 Interest Credits.

(a) Amount of Interest Credits. Annuity Amounts accrued by a Participant pursuant to Section 5.1 shall be automatically increased by a percentage

equal to the "Treasury Bill Rate" for each corresponding period as follows:

Interest Crediting Period	Treasury Bill Rate
Prior to January 1, 2000	The annual interest rate on the one year United States Treasury Bills.
January 1, 2000 — December 31, 2003	The one year Treasury Constant Maturity Yield.
January 1, 2004 — February 23, 2009	The greater of (1) the one year Treasury Constant Maturity Yield as in effect on the last day of the immediately prior Plan Year and (ii) three percent (3%).
February 24, 2009 and thereafter	The one year Treasury Constant Maturity Yield as in effect on the last day of the immediately prior Plan Year.

(b) Accrual of Interest Credits.

(1) For Plan Years beginning on or after January 1, 1987 and prior to January 1, 1996 or, if earlier, a Participant's Annuity Commencement Date, a Participant's Annuity Amounts under Section 5.1 shall be increased on the first daywhoseach calendar quarter by a factor, which when compounded annually, would be equal to the applicable Treasury Bill Rate.

(2) For Plan Years beginning on or after January 1, 1996 and prior to a Participant's Annuity Commencement Date, a Participant's Annuity Amount under Section 5.1 shall be increased daily

by a factor, which when compounded annually, would be equal to the applicable Treasury Bill Rate.

5.4 Special Rules.

(a) Special Rules for Annuity Commencement Dates Prior to January 1. 1999. This Section 5.4(a) shall apply solely with respect to a Participant whose Retirement Income is in the form of the indexed annuity described in Section 7.1(a) or Section 7.2(a) and whose Annuity Commencement Date is prior to January 1, 1999. For Plan Years beginning on or after January 1, 1987, and after such Participant's Annuity Commencement Date, the Participant's five year certain single life annuity shall be increased as of July 1 of each Plan Year by a factor which, when compounded annually, would be equal to the percentage increase in the Consumer Price Index for urban wage earners ("CPI"), measured from (i) January 1 of the year immediately preceding the applicable Plan Year to (ii) December 31 of the year immediately preceding th applicable Plan Year; provided, however, that if the Participant's Annuity Commencement Date is less than twelve months prior to the increase, his annuity shall be increased by the foregoing factor multiplied by the fraction of the year that the Participant has been receiving Retirement Income payments prior to July 1. Notwithstanding anything to the contrary, increases in the CPI in excess of 10 percent in any Plan Year shall not be taken into consideration and decreases in the CPI shall be deemed to be zero.

(b) Special Rules for Participant's Accrued Benefit as in Effect Prior to January 1, 1987.

(1) General Rule. Each Participant who was a Participant in the Plan on or before December 31, 1986 shall be credited with an accrued benefit equal to the accrued benefit that such Participant accrued under the Plan as of December 31, 1986, as determined in accordance with the terms of the Plan as in effect on such date (the "Prior Accrued Benefit"). As of a Participant's Annuity Commencement Date, his Prior Accrued Benefit, if any, shall be converted to a single sum using the appropriate actuarial assumptions set forth in Supplement A. The single sum value determined under the preceding sentence for a Participant shall then be converted to a five year certain single life annuity as of his Annuity Commencement Date. For purposes of converting such single sum value to a five year certain single life annuity, such single sum value shall be divided by the appropriate actuarial equivalence factor as stated in Supplement A.

(2) Form of Payment of Five Year Certain Life Annuity. A Participant's five year certain life annuity computed under this Section 5.4(b) shall be payable to the Participant in the form and manner provided for under Articles 6 and 7, in addition to any other benefits payable to the Participant under the Plan.

(3) Conversion of Prior Accrued Benefit. Notwithstanding anything in Article 5 to the contrary, each Participant who, as of December 31, 1998, has not commenced receiving payment of his benefits under the Plan shall have his Prior Accrued Benefit, if any, converted as of December 31, 1998 (as opposed to as of his Annuity Commencement Date) to a single sum present value deferred to age 65 using for this purpose, the

UP-1984 Mortality Table with an annual interest rate equal to the Pension Benefit Guaranty Corporation immediate annuity rate (that is, 4.25%) and deferred annuity rate in effect for Plan terminations as of January 1, 1998, and such amount, in lieu of being payable to the Participant in addition to any other benefits payable to him under the Plan, shall be added to his benefit accrual as of such date under Section 5.1 and, therefore, shall be subject to automatic increase until his Annuity Commencement Date in accordance with Section 5.3.

(4) Eligible Participants for Prior Accrued Benefit. Each Participant who was a Participant in the Plan on or before December 31, 1986 shall be credited with a Prior Accrued Benefit, provided:

(A) the Participant was an active Participant in the Plan on December 31, 1986;

(B) the Participant accrued at least 5 Years of Benefit Service as of December 31, 1986; and

(C) the Participant's age plus Years of Benefit Service is equal to or greater than 60 on December 31, 1986.

(5) Prior Accrued Benefit Formula. The Prior Accrued Benefit equals:

(A) 1.5% of "Final Average Earnings" multiplied by

(B) the Participant's Years of Benefit Service, less

(C) the Social Security Offset. The Social Security Offset is equal to 50 percent of the Participant's primary "Social Security benefit" at age 65, multiplied by a fraction (not exceeding

one), the numerator of which is the Participant's actual Years of Benefit Service and the denominator of which is the greater of (I) the Participant's total Years of Benefit Service he would have if he had continued as an Employee until the first day of the calendar month following the month he attains age 65, and (II) 30 years;

provided, however, the Prior Accrued Benefit shall not be less than $3.00 multiplied by the Participants number of Years of Benefit Service.

For purposes of this Section 5.4(b)(5), "Final Average Earnings" means the monthly average Earnings of a Participant during the sixty consecutive month period (including partial months) for which his Earnings were highest within the ten years ending December 31, 1998, and "Years of Benefit Service" means each Plan Year in which the Employee is credited with 1,000 or more Hours of Service; provided, that if a participant has less than 1,000 Hours of Service during the Plan Years in which his employment commenced and terminated, his Years of Benefit Service for each such Plan Year shall be determined by dividing the Participant's Hours of Service for such Plan Year by 1,000. Notwithstanding the foregoing, the Prior Accrued Benefit as described in the Evangelical Health Systems Corporation Employees Pension Plan, as amended and restated effective as of January 1, 1986, shall supersede any provisions in this Section 5.4 to the contrary.

5.5 Normal Retirement. If a Participant retires on his Normal Retirement Date, he will be entitled to

Retirement Income in the amount determined under this Article 5 commencing on his Normal Retirement Date. Notwithstanding the foregoing, a Participant whose Annuity Commencement Date is prior to January 1, 1999 and payment of whose Retirement Income is in the form of the indexed five year certain qualified joint and survivor annuity described in Section 7.1(a)(1) or indexed five year certain life annuity described in Section 7.1(a)(2), shall have his Retirement Income automatically increased each year for changes in the "Consumer Price Index" as provided for in Section 5.3.

5.6 Deferred Retirement. If a Participant retires on his Deferred Retirement Date, he will be entitled to Retirement Income commencing on his Deferred Retirement Date. The amount of such Retirement Income shall equal the monthly retirement income to which the Participant would otherwise be entitled for life commencing on his Normal Retirement Date actuarially increased (in accordance with the appropriate table set forth in Supplement A) for each month that commencement of his Retirement Income succeeds his Normal Retirement Date.

5.7 Early Retirement. If a Participant retires on an Early Retirement Date, he will be entitled to Retirement Income in the amount determined under this Article 5 commencing on his Normal Retirement Date. However, in lieu of receiving Retirement Income commencing on his Normal Retirement Date, the Participant may elect (by filing a written election with the Plan Administrator in advance) to receive his Retirement Income commencing at his Early Retirement Date, or on the first day of any calendar month thereafter that occurs before his Normal Retirement Date. If such Retirement Income is to commence prior

to the Participant's Normal Retirement Date, the amount of such Retirement Income shall be actuarially reduced (in accordance with the appropriate table set forth in Supplement A) for each month that the commencement of his Retirement Income precedes his Normal Retirement Date.

5.8 Disability Retirement. If a Participant retires on a Disability Date, he will be entitled to Retirement Income commencing on the first day of the month coinciding with or next following his Normal Retirement Age in an amount equal to his Retirement Income as determined under Section 5.5 subject to the following:

(a) A Participant shall be credited with a benefit accrual for each Plan Year that he is subject to a Permanent Disability at a rate equal to the benefit accrual that such Participant was credited with in the Plan Year immediately preceding the Plan Year in which his Disability Date occurred; and

(b) A Participant whose Disability Date occurs on or after January I , 2002, shall be credited with a benefit accrual for each Plan Year that the Participant is subject to a Permanent Disability at a rate equal to the benefit accrual credited to such Participant with respect to the most recent four-calendar-quarter period in which the Participant earned compensation for the entire calendar-quarter period.

Notwithstanding the foregoing, a Participant who has satisfied the requirements to receive Disability Retirement under this Section 5.8 shall be entitled to receive such benefit prior to his Normal Retirement Date, the amount of which shall be calculated in accordance with the applicable provisions in the Plan and Supplement A, provided that such Participant

makes an irrevocable election to forego additional benefit accruals (to which he would otherwise be entitled under this section) subsequent to the distribution of his benefit. Disability Retirement payments under this Section 5.8 shall be payable: (i) with respect to a Participant who has reached his earliest Early Retirement Date, in any available form elected by such Participant; and (ii) with respect to a Participant who has not reached his earliest Early Retirement Date, in the form of a lump sum.

5.9 Minimum Accrued Benefit for Section 401(a)(17) Employees.

(a) Minimum Accrued. Benefit. Notwithstanding any other provision in the Plan, each Section. 401(a)(17) Employee's Accrued Benefit under this Plan can be no less than:

(1) the Employee's Accrued Benefit as of December 31, 1988, frozen in accordance with Code Section 401(a)(17);

(2) the Employee's Accrued Benefit determined under the benefit formula applicable for the Plan Year beginning on or after January 1, 1989 and before January 1, 1994, as applied to the years of service credited to the Employee for the Plan Year beginning on or after January 1, 1989 and before January 1, 1994, for purposes of benefit accruals, frozen in accordance with Treasury Regulation Section 1.401(a)(4)-13; or

(3) the Employee's Accrued Benefit determined under the benefit formula applicable for the Plan Year beginning on or after January 1, 1994, as applied to the years of service credited to the Employee for Plan Years beginning on or after January 1, 1994, for purposes of benefit accruals.

(b) Definition of Section 401(a)(17) Employee. An Employee is a "Section 401(a)(17) Employee" as of a date on or after January 1, 1989 (the "statutory effective date"), if the Employee's current Accrued Benefit as of that date is based on compensation for a year prior to the statutory effective date that exceeded the annual compensation limit for the first Plan Year beginning on or after the statutory effective date. In addition, an Employee is a Section 401(a)(17) Employee as of a date on or after January 1, 1994 (the "OBRA '93 effective date"), if the Employee's current accrued benefit as of that date is based on compensation for a year prior to the OBRA '93 effective date.

5.10 Form of Payment. If a Participant becomes entitled to receive Retirement Income under the foregoing provisions of this Article 5, payment of such benefit shall he made in accordance with, and subject to, the applicable provisions of Article 7 and any applicable supplement.

5.11 Minimum Benefits For Participants Who Were Active Participants on December 31, 1986. Notwithstanding any other provision in the Plan to the contrary, with respect to Participants who as of December 31, 1986 were active Participants under the Plan as in effect on such date and who had completed five Years of Vesting Service and whose age and Years of Vesting Service equals or exceeds sixty (60) as of such date, each such Participant's Retirement Income under the Plan shall not be less than the actuarial equivalent of the Retirement Income that the Participant would have been entitled to receive under the terms of the Plan as in effect on December 31, 1986 if the terms of the Plan as in effect on such date had been continued until his Retirement Date. The actuarial

equivalent benefit hereunder shall be determined under Section 5.4.

ARTICLE 6
DEFERRED VESTED BENEFITS; DEATH BENEFITS

6.1 Deferred Vested Benefit. If a Participant terminates employment with all of the Advocate Companies before he qualifies for Retirement Income on a Retirement Date but after he has completed five or more Years of Vesting Service or if he has incurred a Permanent Disability and has less than five Years of Vesting Service on the date of his Permanent Disability, he will be eligible to receive a Deferred Vested Benefit in the amount determined under Article 5 commencing on his Normal Retirement Date.

6.2 Early Deferred Vested Benefit.

(a) In lieu of receiving a Deferred Vested Benefit commencing on his Normal Retirement Date, a Participant may elect (by filing a written election with the Plan Administrator in advance) to receive his Deferred Vested Benefit as of the beginning of any calendar month within the 10-year period preceding his Normal Retirement Date. If such Deferred Vested Benefit is to commence prior to the Participant's Normal Retirement Date, the amount of such Retirement Income shall be actuarially reduced (in accordance with the appropriate table set forth in Supplement A) for each month that the commencement of his Deferred Vested Benefit precedes his Normal Retirement Date.

(b) Notwithstanding any provision of the Plan to the contrary, effective only for Annuity Commencement Dates prior to January 1, 2010, in lieu of receiving a monthly Deferred Vested Benefit as

described above, a Participant may elect to receive his Deferred Vested Benefit in the form of a single sum payment at any time subsequent to the Participant's termination of employment with all Advocate Companies, provided that such Participant first obtains the consent of his spouse to such election in accordance with Section 7.4. With respect to the Participant who elects to receive his Deferred Vested Benefit prior to his earliest Early Retirement Date in accordance with the preceding sentence, such benefit shall only be paid in the form of a lump sum.

6.3 Death Benefits.

(a) Death Benefits. Subject to Section 6.3(d), upon the death of a Participant before his Retirement Date or other termination of employment and if his Eligible Spouse is his Beneficiary pursuant to Section 7.13, the Eligible Spouse shall be entitled to receive a monthly retirement income for life, or at the Eligible Spouse's election, in lieu of such monthly retirement income, a single sum payment equal to the Participant's Accrued Benefit as determined in accordance with Article 5 and this Section 6.3. If someone other than his Eligible Spouse is the Participant's Beneficiary pursuant to Section 7.13, such Beneficiary shall be entitled to receive the Participant's Accrued Benefit as determined under Article 5 in the form of a single sum payment. The amount of monthly income payable to a Participant's Eligible Spouse under this Section 6.3 shall be the benefit that would have been payable to the Participant if he had terminated employment on the date of his death and commenced his monthly retirement income on his earliest Early Retirement Date adjusted actuarially for the differences in

the Participant's age and his Eligible Spouse's age (in accordance with the appropriate actuarial equivalence factor set forth in Supplement A).

(b) Commencement of Death Benefits. Benefits payable under this Section 6.3 shall commence: (i) with respect to a Beneficiary who is not the Participant's Eligible Spouse, as soon as practicable following the death of the Participant, and (ii) with respect to a Beneficiary who is the Participant's Eligible Spouse, on the date on which the Participant would have reached his earliest Early Retirement Date; provided, however that the Eligible Spouse may elect to receive the benefits payable under this Section 6.3 at any time prior to such date in the form of a single sum payment only.

(c) Eligible Spouse. The spouse of a Participant will be considered as an "Eligible Spouse" as of any date only if at least 12 months prior thereto the Participant and spouse are married in a religious or civil ceremony recognized under the laws of the state where the marriage was contracted and the marriage remains legally effective.

(d) Minimum Death Benefits For Eligible Spouses of Participants Who Were Active Participants on December 31, 1986. The Eligible Spouse of a Participant entitled to receive a minimum benefit determined in accordance with Section 5.11 shall he entitled to receive a monthly retirement amount under this Section 6.3 which is not less than the benefit such Eligible Spouse would have been entitled to receive under the terms of the Plan as is effect on December 31, 1986, based on the Participant's accrued benefit as determined in accordance with Section 5.11.

ARTICLE 7
PAYMENT OF RETIREMENT INCOME AND OTHER BENEFITS

7.1 Normal Form of Payment of Benefits. Retirement Income and Deferred Vested Benefits payable under the Plan shall be paid in the applicable normal form of payment, unless the Participant elects an available optional form of payment in accordance with this Article 7.

(a) Annuity Commencement Date Before January 1, 1999. The following shall apply solely to Participants whose Annuity Commencement Date is prior to January 1, 1999:

(1) Five Year Certain Qualified Joint and Survivor Annuity. If a Participant retires on a Retirement Date, or if a Participant's employment terminates before retirement under the Plan and he is entitled to a Deferred Vested Benefit, and if the Participant has a spouse immediately preceding his Annuity Commencement Date, payment of his monthly benefit shall be in the form of an indexed five year certain "qualified joint and survivor annuity" unless he had elected in lieu thereof to receive payment either in the form of an indexed five year certain life annuity under paragraph (2) next below or under a benefit option described in Section 7.2(a) (and such option is in effect on his Annuity Commencement Date). Such qualified joint and survivor annuity shall consist of a monthly benefit payable as an indexed annuity continuing during the Participant's lifetime and if the Participant's spouse is living at the time of the Participant's death (and benefit payments to the Participant had commenced prior to the date of his death) payment of one-half of

such monthly benefit shall be made to his spouse until the spouse's death occurs and if the Participant and his spouse both die within the period of five years from the Participant's Annuity Commencement Date, a continuing monthly payment of the same amount to the estate of the last survivor for the balance of such five year period. The amount of such monthly benefit under this paragraph shall be calculated so that it is the actuarial equivalent of the retirement or Deferred Vested Benefit to which the participant is otherwise entitled. If a Participant who retired on a Normal or Early Retirement Date dies prior to his Annuity Commencement Date, or if a Participant who has continued employment after he has attained Normal Retirement Age dies before his Retirement Date, and if such Participant had an Eligible Spouse at the time of his death, then, unless the Participant had elected that benefits not be paid to his Eligible Spouse in accordance with this Article 7, benefits shall be payable to the Participant's Eligible Spouse in accordance with Section 6.3.

(2) Five Year Certain Life Annuity. A Participant who is not married or a married Participant who has elected out of the qualified joint and survivor annuity described in Section 7.1(a)(1) above shall receive a monthly benefit payable as an indexed annuity on a life annuity basis if his monthly benefit is not payable under a benefit option described in Section 7.2(a). Notwithstanding the foregoing, if the Participant dies within five years from his Annuity Commencement Date, a monthly payment of the same amount shall be payable to the Participant's

Beneficiary pursuant to Section 7.13 for the balance of such five year period.

(b) Annuity Commencement Date After December 31, 1998. The following shall be effective solely with respect to Participants whose Annuity Commencement Date is after December 31, 1998:

(1) Qualified Joint and Survivor Annuity. If a Participant retires on a Retirement Date, or if a Participant's employment terminates before retirement under the Plan and he is entitled to a Deferred Vested Benefit, and if the Participant has a spouse immediately preceding his Annuity Commencement Date, payment of his monthly benefit shall be in the form of a level "qualified joint and survivor annuity" unless he had elected in lieu thereof to receive payment either in the form of a five year certain life annuity under paragraph (2) next below or under a benefit option described in section 7.2(b) (and such option is in effect on his Annuity Commencement Date). Such qualified joint and survivor annuity shall consist of a monthly benefit payable as a level annuity continuing during the participant's lifetime and if the Participant's spouse is living at the time of the Participant's death (and benefit payments to the Participant had commenced prior to the date of his death) payment of one-half of such monthly benefit shall be made to his spouse until the spouse's death occurs. The amount of such monthly benefit under this paragraph shall be calculated so that it is the actuarial equivalent of the retirement or Deferred Vested Benefit to which the Participant is otherwise entitled. If a Participant who retired on a Normal or Early

Retirement Date dies prior to his Annuity Commencement Date, or if a Participant who has continued employment after he has attained Normal Retirement Age dies before his Retirement Date, and if such Participant had an Eligible Spouse at the time of his death, then, unless the Participant had elected that benefits not be paid to his Eligible Spouse in accordance with this Article 7, benefits shall be payable to the Participant's Eligible Spouse in accordance with Section 6.3.

(2) Five Year Certain Life Annuity. A Participant who is not married or a married Participant who has elected out of the qualified joint and survivor annuity described in Section 7.1(b)(1) above shall receive a monthly benefit payable as a level annuity on a life annuity basis if his monthly benefit is not payable under a benefit option described in Section 7.2(b). Notwithstanding the foregoing, if the Participant dies within the period of five years from his Annuity Commencement Date, a monthly payment of the same amount shall be payable to the Participant's Beneficiary pursuant to Section 7.13 for the balance of such five year period.

7.2 Optional Forms of Payment of Benefits. In lieu of the normal form of monthly benefit specified in Section 7.1, and subject to the consent and election rules in Section 7.4 and 7.5 and to the provisions of Article 6, a Participant may elect Retirement Income or Deferred Vested Benefit in one of the following forms:

(a) Annuity Commencement Date Before January 1, 1999. The following shall be effective solely with

respect to Participants whose Annuity Commencement Date is before January 1, 1999:

(1) Ten Year Certain Annuity. A monthly benefit payable as an indexed annuity to the Participant during his lifetime and, if the Participant dies within a period of ten years from his Annuity Commencement Date, a continuing monthly payment of the same amount for the balance of such ten year period to a person or persons designated by the Participant as his beneficiary; provided that the ten year certain option shall not be available if the life expectancy of the Participant is less than ten years or the joint life expectancy of the Participant and his designated beneficiary is less than ten years on his Annuity Commencement Date. Conversion rate of normal form of payment to ten year certain option shall be 95% of normal form.

(2) Five Year Certain Joint and Survivor Annuity. A smaller monthly benefit payable as an indexed annuity to the Participant during his lifetime and, if another person he had designated is living at the time of his death, payment of 100 percent, 75 percent or 50 percent of that amount to such other person as long as such other person lives and, if the Participant dies within a period of five years from his Annuity Commencement Date, a continuing monthly payment of the same amount which had been payable to the Participant will be payable to the Participant's designated beneficiary for the balance of such five year period; provided, however, that if the Participant designates as his beneficiary someone other than his spouse, the option shall be designed so that the lump sum actuarially equivalent value of the

monthly benefit payable to him under the option over his life expectancy shall be greater than 50 percent of the lump sum actuarially equivalent value of the monthly benefit that otherwise would be payable to the Participant in the form of a five year certain life annuity under Section 7.1(a).

(3) Single Sum. Payment of a Participant's Accrued Benefit as determined under Article V in a single sum. For purposes of converting a Participant's Accrued Benefit to a single sum, such Accrued Benefit shall be multiplied by the appropriate actuarial equivalence factor as set forth in Supplement A.

(b) Annuity Commencement Date After December 31, 1998. The following shall be effective solely with respect to Participants whose Annuity Commencement Date is after December 31, 1998:

(1) Joint and Survivor Annuity.

(A) A Participant whose Annuity Commencement Dates is after December 31, 1998 but before January 1, 2007 may elect a monthly benefit payable to the Participant during his lifetime and, if another person he had designated is living at the time of his death, payment of 100 percent or 50 percent of that amount to such other person as long as such other person lives; provided, however, that if the Participant designates someone other than his spouse, the option shall be designed so that the lump sum actuarially equivalent value of the monthly benefit payable to the Participant under the option over his life expectancy shall be greater than 50 percent of the lump sum actuarially equivalent value of the monthly

benefit that otherwise would be payable to the Participant on the life annuity basis.

(B) A Participant whose Annuity Commencement Dates is after December 31, 2006 but before January 1, 2008 may also elect a monthly benefit payable to the Participant during his lifetime and, if another person he had designated is living at the time of his death, payment of 75 percent of that amount to such other person as long as such other person lives; provided, however, that if the Participant designates someone other than his spouse, the option shall be designed so that the lump sum actuarially equivalent value of the monthly benefit payable to the participant under the option over his life expectancy shall be greater than 50 percent of the lump sum actuarially equivalent value of the monthly benefit that otherwise would be payable to the Participant on the life annuity basis.

(C) Notwithstanding the preceding paragraphs, a Participant whose Annuity Commencement Date is after December 31, 2007 may elect a monthly benefit payable to the Participant during his lifetime and, if his spouse is living at the time of his death, payment of 100 percent, 75 percent or 50 percent of that amount to his spouse as long as the spouse lives.

(2) Single Sum. Payment of a Participant's Accrued Benefit as determined under Article V in a single sum. For purposes of converting a Participant's Accrued Benefit to a single sum, such Accrued Benefit shall be multiplied by the appropriate actuarial equivalence factor as set forth in Supplement A.

7.3 Waiver of Normal Form of Benefit.

(a) Election Out of Normal Form of Benefit. The normal form of benefit under Section 7.1 shall be the automatic form of benefit for a Participant with an Eligible Spouse. Subject to the provisions of Sections 7.3 and 7.4, a Participant with an Eligible Spouse may elect in writing to receive an optional form of benefit under Section 7.2 in lieu of the automatic form of benefit.

(b) Irrevocable Election. Such election will be revocable and a new election may be made at all times during the election period as described in Section 7.3(c).

(c) Election Period. Effective January 1, 2007, the election period shall consist of the 180-day period ending on the Annuity Commencement Date.

(d) Pension Election Information. The Plan Administrator shall furnish "Pension Election Information" (as described below) to a Participant who intends to commence payment of Retirement Income under the Plan. The Pension Election Information must be furnished to the Participant no less than 30 days and, effective January 1, 2007, no more than 180 days before his Annuity Commencement Date. The term "Pension Election Information" refers to a written notice in nontechnical language describing the material features and relative value of the qualified joint and survivor annuity and life annuity, in accordance with the timing, content, and other requirements of Code Section 417(a)(3) and the regulations thereunder, which are hereby incorporated by reference. The Pension Election Information shall include:

(1) the terms and conditions of the qualified joint and survivor annuity and life annuity;

(2) the right of the Participant to make, and the effect of, an election to waive such qualified joint and survivor annuity;

(3) the rights of the Eligible Spouse of the Participant under Section 7.4; and

(4) the right to make, and the effect of, a revocation of an election under this Section 7.3.

(e) Waiver of Written Explanation. A Participant may elect (with applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the Annuity Commencement Date (or to waive the 30-day election period described above) if the distribution commences more than seven days after such explanation is provided.

7.4 Spousal Consent. A married Participant's election of an optional form of payment or designation of a Beneficiary other than his spouse, must be accompanied by the spouse's written consent; provided, however, spousal consent shall not be required for the election of a beneficiary option of a joint and survivor annuity for which the spouse is the named beneficiary which is actuarially equivalent to the normal form of benefit under Sections 7.1 and 7.2. Spousal consent shall be subject to the following:

(a) The spousal consent must be in written form, shall acknowledge the effect of the election, and shall be witnessed by a Plan representative or notary.

(b) The consent must refer to the specific optional form of payment being elected or to the specific nonspousal beneficiary (including any class of

beneficiaries or any contingent beneficiaries) being designated.

(c) Once made, a spouse's consent to such an election is irrevocable by the spouse.

(d) Prior to the commencement of the Retirement income, a Participant may revoke his waiver of the normal form of benefit thereby nullifying the applicable spousal consent. Any post-revocation waiver and election of another optional form of payment or a designation of another nonspousal beneficiary shall require a new consent by the spouse in accordance with this Section 7.4.

(e) Notwithstanding the foregoing, spousal consent shall not be required if it established to the satisfaction of the Plan Administrator that there is no spouse, that such spouse cannot be located or because of such other circumstances as may be permitted by Treasury Regulations.

7.5 Rules as to Election and Discontinuance of Optional Forms of Payment of Benefits. A Participant's election of an optional form of benefit specified in Section 7.2 shall be subject to the following rules and the spousal consent rules described in Section 7.4, to the extent applicable:

(a) An election of an optional form of benefit must be in writing, signed by the Participant, and received by the Plan Administrator. If payment of a Participant's Retirement Income otherwise would be required pursuant to Section 7.1(a)(1) or (b)(I), the election of an optional form of benefit must also contain his election and his spouse's consent not to receive payment in the form of the qualified joint and survivor annuity described in that subsection.

(b) A Participant who has elected an option may revoke it at any time prior to his Annuity Commencement Date in writing filed with the Plan Administrator. A Participant who has elected an option may change it at any time prior to his Retirement Date or termination of employment with the Advocate Companies. A revocation or change of an option may be made without the consent of the person or persons the Participant had designated in the option except to the extent the consent of a Participant's spouse is required under Section 7.4.

(c) If a Participant who had elected an option dies before his Retirement Date or termination of employment with the Advocate Companies, such option automatically will be canceled and no benefits will be paid to any person under such option, except as otherwise provided with respect to such option, and benefits shall be payable as provided in Section 6.3.

(d) If the person designated by a Participant in his election of an option dies before the Participant's Retirement Date or termination of employment with the Advocate Companies, the option automatically shall be canceled and the Participant's Retirement Income shall be paid to him in the normal form unless a new election can be and is made by the Participant in accordance with this Article 7.

(e) If after a Participant has commenced receiving his Retirement Income under Section 7.2(a)(1), 7.2(a)(2) or 7.2(b)(1), but prior to the Participant's death, the person designated by the Participant under such Section dies, the option shall remain in effect but no benefits shall become payable to the deceased Participant's Beneficiary under the option,

except as otherwise provided with respect to such option.

7.6 Pre-Retirement Death Benefit. If a vested Participant dies before his Annuity Commencement Date, his Beneficiary shall be entitled to receive a benefit in accordance with the applicable provisions of Section 6.3.

7.7 Timing of Commencement of Distribution. Payment of benefits under the Plan to a Participant shall commence not later than the I80th day after the end of the Plan Year in which the Participant attains Normal Retirement Age or terminates employment with the Advocate Companies, whichever occurs later.

7.8 Required Minimum Distributions.

(a) General Rules.

(1) Effective Date. The provisions of this Section 7.8 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year and will take precedence over any inconsistent provisions of the Plan.

(2) Treasury Regulations. All distributions required under this Section 7.8 will be determined and made in accordance with Code Section 401(a)(9) and the regulations thereunder, including the minimum incidental death benefit set forth in Code Section 40I(a)(9)(G) and Treasury Regulations Sections 1.40I(a)(9)-2 through 1.401(a)(9)-9, which are herein incorporated by reference and shall supersede any provision in the Plan to the contrary.

(3) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section 7.8,

other than Section 7.8(a)(2) above, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act ("TEFRA") and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(b) Time and Manner of Distribution.

(1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

(2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(A) If the Participant's surviving spouse is the Participant's sole Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70%2, if later.

(B) If the Participant's surviving spouse is not the Participant's sole Beneficiary, then distributions to the Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) If there is no Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest

will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(D) If the Participant's surviving spouse is the Participant's sole Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 7.8(b)(2), other than Section 7.8(b)(2)(A), will apply as if the surviving spouse were the Participant.

For purposes of this Section 7.8(b)(2) and Section 7.8(d), unless Section 7.8(b)(2)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 7.8(b)(2)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 7.8(b)(2)(A). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 7.8(b)(2)(A)), the date distributions are considered to begin is the date distributions actually commence.

(3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 7.8(c), 7.8(d) and 7.8(e). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in

accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations. Any part of the Participant's interest which is in the form of an individual account described in Code Section 414(k) will be distributed in a manner satisfying the requirements of Code Section 401(a)(9) and the Treasury regulations that apply to individual accounts.

(e) Determination of Amount to be Distributed Each Year.

(1) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(A) the annuity distributions will be paid in periodic payments made at intervals not longer than one year.

(B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 7.8(d) or 7.8(e).

(C) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted, unless the Plan Administrator establishes uniform and nondiscriminatory procedures to allow the period to change in the event of actual retirement, marriage or Plan termination, as provided under Treasury Regulation Section I.401(a)(9)-6.

(D) payments will either be nonincreasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics for a 1 2-month period ending in the year during which the increase occurs, or the year immediately preceding the year during which the increase occurs;

(ii) To the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 7.8(d) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p);

(iii) To provide cash refunds of Employee contributions upon the Participant's death; or

(iv) To pay increased benefits that result from a Plan amendment.

(2) The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 7.8(b)(2)(A) or (B)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received (e.g., bi-monthly, monthly, semi-annually, or annually). All of the Participant's benefit accruals as of the last day of the first distribution

calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date. If the Participant retires after the calendar year in which the Participant attains age 70 1/2 without having commenced distribution of the Participant's benefit under the Plan, for each Plan Year in which either (a) the Participant's annual benefit accrual for the applicable Plan Year, or (b) the actuarial increase required under Code Section 41I for the applicable Plan Year is less than the amount of actuarial increase required under Treasury Regulation Section 1.401(a)(9)-6 Q&A-8, the Participant's benefit shall be actuarially increased using the actuarial equivalent factors as defined in Supplement A to the Plan to the extent necessary to allow the Plan to satisfy the requirements of Treasury Regulation Section 1.401(a)(9)-6 Q&A-9 until the Participant receives a distribution from the Plan.

(3) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(d) Requirements for Annuity Distributions That Commence During Participant's Lifetime.

(1) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary, annuity payments to be made on or after the Participant's

Required Beginning Date to the Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Treasury Regulation Section 1.401(a)(9)-6, Q&A-2. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Beneficiary after the expiration of the period certain.

(2) Period Certain Annuities. Unless the Participant's spouse is the Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9 for the calendar year that contains the Annuity Commencement Date, If the Annuity Commencement Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9 plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Commencement Date. If the Participant's spouse is the Participant's sole Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution

period, as determined under this Section 7.8(d)(2), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Treasury Regulation Section I.40I(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the Annuity Commencement Date.

(e) Requirements for Minimum Distributions Where Participant Dies Before Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 7.8(b)(2)(A) or (B), over the life of the Beneficiary or over a period certain not exceeding:

(A) unless the Annuity Commencement Date is before the first distribution calendar year, the Life Expectancy of the Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(B) if the Annuity Commencement Date is before the first distribution calendar year, the Life Expectancy of the Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the Annuity Commencement Date.

(2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 7.8(c) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 7.8(b)(2)(A).

(f) Definitions.

(1) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 7.13 of the Plan and is the designated beneficiary under Code Section 40I(a)(9) and Treasury Regulation Section I.40I(a)(9)-I, Q&A-4.

(2) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution

calendar year is the calendar year in which distributions are required to begin pursuant to Section 7.8(b)(2).

(3) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.

(4) Required Beginning Date. The term "Required Beginning Date: means:

(i) For a Participant who is not a 5-percent owner, the April 1 attaining age 701/4 years after December 31, 1996 may elect by April 1 of the calendar year following the year in which the Participant attained age 701/4 to defer distributions until the calendar year following the calendar year in which the Participant retires, and if no such election is made the Participant will begin receiving distributions by the April 1 of the calendar year following the year in which the Participant attains age 70'/2; and

(ii) Any Participant, except a 5-percent owner, attaining age 701/4 years prior to January 1, 1997 may elect to stop distributions and recommence them by the April 1 of the calendar year following the year in which the Participant retires and, in such event, there is no new annuity starting date upon recommencement.

For this purpose, a Participant is a "5-percent owner" if such Participant is a 5- percent owner as defined in Code Section 416, at any time during the Plan Year ending in the calendar year in which such Participant attains age 701/4. Once distributions have begun to a 5-

percent owner under this Section, they must continue to be distributed, even if the Participant ceases to be a 5-percent owner.

7.9 Payment of Small Amounts; Distribution Restrictions on Larger Amounts.

(a) If the lump sum actuarially equivalent value of the vested Accrued Benefit payable to any Participant who terminates employment with the Advocate Companies under the Plan does not exceed $1,000, then, in lieu of payment of any other benefit, the Plan Administrator shall direct that an amount equal to the lump sum actuarially equivalent value of such Participant's vested Accrued Benefit be paid to such person in a lump sum as soon as practicable thereafter. For this purpose, if the value of a Participant's vested and nonforfeitable benefit under the Plan as of the Participant's date of termination is zero, the Participant shall be deemed to have received a total distribution of such vested and nonforfeitable benefit as of such date.

(b) If the lump sum actuarially equivalent value of the vested Accrued Benefit payment to any Participant who terminates employment with the Advocate Companies exceeds $1,000 but does not exceed $5,000, a lump sum settlement shall be directed only with the written consent of the Participant. In such case, if the Participant does not timely elect to have such distribution paid directly to an Eligible Retirement Plan in a Direct Rollover or to receive the distribution directly, then the Plan Administrator will pay the distribution in a direct rollover to an individual retirement Plan designated by the Plan Administrator.

(c) Notwithstanding the foregoing, if the lump sum actuarial equivalent value of a Participant's vested Accrued Benefit exceeds $5,000, no amount shall be distributable to the Participant prior to the date the Participant attains Normal Retirement Age without the Participant's written consent and, if the Participant's benefit is to be distributed in any form other than a qualified joint and survivor annuity, the written consent of the Participant's Eligible Spouse.

(d) For purposes of determining the lump sum values under this Section 7.9, the Participant's Accrued Benefit shall be multiplied by the appropriate actuarial factor as set forth in Supplement A. Written consent of the Participant (or the Participant's eligible spouse) to the distribution must be filed with the Plan Administrator not more than 90 days before the Annuity Commencement Date. Neither the consent of the Participant nor the Participant's spouse shall be required to the extent that a distribution is required to satisfy Code Section 4010)(9) or Code Section 415.

7.10 Distributions to Alternate Payees. Notwithstanding the foregoing provisions of this Article 7, in the event that the Plan Administrator determines that benefits are payable to an alternate payee pursuant to the terms of a court order determined to be a qualified domestic relations order (as defined in Section 17.3), the lump sum actuarial equivalent of the amounts so payable shall be determined in accordance with Supplement A and shall be paid in a lump sum as soon as practicable thereafter.

7.11 Deceased or Missing Persons. Each Participant and each other person entitled to benefits under the Plan must file with the Plan Administrator from

time to time in writing his post office address and each change of post office address. Any communication, statement or notice addressed to a Participant or a person entitled to benefits at his last post office address as shown on the Employers' records will be binding on the Participant and any person entitled to benefits for all purposes of the Plan. None of the Employers or the Plan Administrator are required to search for or locate any Participant or other person entitled to benefits under the Plan. If the Plan Administrator cannot ascertain the whereabouts of any person to whom a payment is due under the Plan, and if, after five years from the date such payment is due, a notice of such payment due is mailed to the last known address of such person, as shown on the records of the Plan Administrator, and within three months after such mailing such person has not made written claim therefor, the Plan Administrator, if it so elects, after receiving advice from counsel to the Plan, may direct that such payment and all remaining payments otherwise due to such person be cancelled on the records of the Plan and the amount thereof will apply to reduce contributions of the Participant's Employer, and upon such cancellation, the Plan and the Pension Fund shall have no further liability therefor except that, in the event such person later notifies the Plan Administrator of his whereabouts and requests a payment or payments due to such person under the Plan, the amount so applied shall be paid to such person as provided in this Article 7.

7.12 Payment with Respect to Incapacitated Participants or Beneficiaries. If any person entitled to benefits under the Plan is under a legal disability or, in the Plan Administrator's opinion, is incapacitated in any way so as to be unable to manage his financial affairs, the Plan Administrator may direct the payment of

such benefits to such person's legal representative or to a relative or friend of such person for such person's benefit, or the Plan Administrator may direct the application of such benefit for the benefit of such person in any manner which the Plan Administrator may select that is permitted by federal law and is consistent with the Plan. Any payments made in accordance with the foregoing provisions of this Section shall be a full and complete discharge of any liability for such payments.

7.13 Beneficiaries. A Participant may from time to time designate a Beneficiary or Beneficiaries to whom the Participant's benefits will be distributed in the event of the Participant's death prior to complete payment of his benefits under the Plan. A Participant may designate contingent or successive Beneficiaries and may name individuals, legal persons or entities, trusts, estates, trustees or other legal representatives as beneficiaries. A Beneficiary designation properly completed will cancel all previous designations. Notwithstanding the foregoing, or any Beneficiary designation received by the Plan, if a Participant is married at the date of his death, the Participant's surviving spouse will be his Beneficiary for all purposes of the Plan unless the surviving spouse consents in writing to the Participant's designation of another Beneficiary. Beneficiary designations must be completed during the Participant's lifetime; however, his surviving spouse may consent to a designation after his death. The consent of a surviving spouse to the Participant's designation of another Beneficiary must be in writing, acknowledge the effect of such designation, and be witnessed by a Plan representative or a notary public. If there is no Beneficiary designation made by an unmarried Participant, or if no surviving spouse or Beneficiary is living at the time any distribution

remains to be paid, the benefits shall be paid to the Participant's estate.

7.14 Direct Rollover of Eligible Rollover Distributions. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section 7.14, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct rollover. In applying the provisions of this Section 7.14, the following shall apply:

(a) Eligible Rollover Distribution. An "Eligible Rollover Distribution" means any distribution made on or after January I, I993 of all or any portion of the balance to the credit of the Distributee; provided that an Eligible Rollover Distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or. the joint lives (or joint life expectancies) of the Distributee and the Distributee's Beneficiary, or for a specified period of ten years or more, (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9), and (iii) the portion of any distribution to the extent such distribution is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). For purposes of this Section 7.14(a), an Eligible Rollover Distribution shall also include, to the extent applicable, the portion of a Participant's distribution which contains after-tax contributions previously permitted to be made under the Plan where such amounts are transferred

directly to: (i) a qualified trust (including, effective January 1, 2007, a defined benefit plan trust) or, effective January 1, 2007, an annuity contract described in Code Section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (ii) an individual retirement account or annuity described in Code Section 408(a) or 408(b), in accordance with the applicable provisions of Code Section 402(c)(2), which are incorporated herein by reference.

(b) Eligible Retirement Plan. An "Eligible Retirement Plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Section 403(a), an annuity contract described in Code Section 403(b), a qualified trust described in Code Section 40I(a), or an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, that accepts the Distributee's Eligible Rollover Distribution and agrees to separately account for amounts transferred into such plan from the Plan. Effective January 1, 2008, the term Eligible Retirement Plan shall include a Roth IRA (as described in Code Section 408A), subject to the restrictions set forth in Code Section 408A, which are herein incorporated by reference. However, in the case of an Eligible Rollover Distribution to a surviving spouse, or a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined

in Code Section 414(p), an Eligible Retirement Plan is an individual retirement account or individual retirement annuity or effective January 1, 2008, a Roth IRA.

(c) Distributee. A "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's former surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse. Effective for distributions made on and after January 1, 2008, a Participant's designated non-spouse beneficiary may be a Distributee to the extent that the Eligible Rollover Distribution is paid in the form of a direct rollover to (i) an individual retirement account, in accordance with the requirements of Code Section 402(c)(1I), which are herein incorporated by reference, or (ii) a Roth IRA (as described in Code Section 408A), subject to the restrictions set forth in Code Section 408A, which are herein incorporated by reference.

(d) Direct Rollover. A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

7.15 Retroactive Annuity Commencement Dates. Effective as of January I, 2004, the payment of benefits with an Annuity Commencement Date that occurs on or before the date the written explanation required by Section 7.3 is provided to the Participant (a "Retroactive Annuity Commencement Date") shall be made in accordance with this Section 7.15 and the requirements of Code Section 417 and the regulations and applicable guidance thereunder.

(a) Certain Participants in the Plan who have an accrued benefit payable at age 65 as a result of being a Participant in a predecessor plan that was merged with and into the Plan and who were, on the effective date of the plan merger, terminated with a Deferred Vested Benefit, may have a Retroactive Annuity Commencement Date if their accrued benefit payments do not commence at age 65. Such Participants who elect a Retroactive Annuity Commencement Date as provided below shall receive:

(1) a lump sum payment equal to the amount of benefits that the Participant would have received if his benefit payments began at age 65, with an appropriate adjustment using the applicable interest rate and the applicable mortality table as defined in Supplement A, Section A-3(c)(i) and (ii) at the time the Participant reaches age 65; plus

(2) future periodic payments in the form as elected by the Participant equal to the benefit that would have been paid if the payment had actually commenced at age 65.

(b) Any Participant described in Section 7.15(a) above may elect a Retroactive Annuity Commencement Date payable in accordance with the following requirements:

(1) The Participant's spouse, determined as if the date distributions commence were the Participant's Annuity Commencement Date, must consent to the distribution in the manner as provided in Section 7.4. The Pension Election Information required by Section 7.3 must generally be provided no less than 30 and no more than 90 days (effective January 1, 2007, 180 days) before the date of the first payment of benefits and the

election to receive the distribution must be made after such explanation is provided and on or before the first date of payment; provided, however, a Participant may elect (with applicable spousal consent) to waive any right that the written explanation be provided at least 30 days before the Retroactive Annuity Commencement Date if the distribution commences more than seven days after such explanation is provided.

(2) The distribution, including any interest adjustments, shall satisfy the requirements of Code Section 415 if the date the distribution commences is substituted for the Annuity Commencement Date for all purposes, including for purposes of determining the applicable interest rate and the applicable mortality table.

(3) The distribution shall be no less than the present value of the benefit payable at normal retirement age in the form as elected by the Participant to be paid on the retroactive annuity starting date, using the applicable interest rate and the applicable mortality table as defined in Supplement A, Section A-3(c)(i) and (ii) as of the distribution date.

(c) If a Participant described in Section 7.15(a) does not elect a Retroactive Annuity Commencement Date, such Participant will receive a calculation of his Accrued Benefit on a current basis actuarially adjusted to reflect the delayed payment, using the applicable interest rate and the applicable mortality table as defined in Supplement A, Section A-3(c)(i) and (ii) as of the distribution date.

ARTICLE 8
FORFEITURES AND REEMPLOYMENT

8.1 Forfeitures.

(a) Eligibility Service. If an Employee has a one-year Break in Service, the Employee's Eligibility Service shall be forfeited at the time of the initial one-year Break in Service.

(b) Years of Vesting Service. If a nonvested Employee has five or more consecutive one-year Breaks in Service, such nonvested Employee's Years of Vesting Service shall be forfeited after five such consecutive one-year Breaks in Service. No forfeiture of Years of Vesting Service shall occur for a vested Employee regardless of the number of his consecutive one-year Breaks in Service.

(c) Annuity Amounts. If a nonvested. Participant has five or more consecutive one-year Breaks in Service, his Annuity Amounts shall be forfeited after five such consecutive one-year Breaks in Service. No forfeiture of Annuity Amounts shall occur for a vested Participant regardless of the number of his consecutive one-year Breaks in Service.

8.2 Rehired Employee. If a former Employee of an Advocate Company, who had not previously become a Participant in the Plan (i.e., the former Employee never satisfied the eligibility requirements in Section 3.I), is reemployed by an. Advocate Company (a "Rehired Employee"), the following provisions shall apply, notwithstanding any other provisions of the Plan:

(a) A Rehired Employee shall become an active Participant when he meets the eligibility requirements of Section 3.1.

(b) If a Rehired Employee is reemployed by an Advocate Company before he has incurred a one-year Break in Service, his employment with the Advocate Companies shall be deemed to have continued without interruption for purposes of determining his Eligibility Service, Years of Vesting Service and Annuity Amounts; provided, however, for purposes of Eligibility Service, such Rehired Employee must be reemployed by an Advocate Company within twelve months from his initial date of hire.

(c) If a Rehired Employee has one or more one-year Breaks in Service but is later reemployed by an Advocate Company and becomes an active Participant prior to incurring five consecutive one-year Breaks in Service, he shall continue to be credited with any of his prior Years of Vesting Service (not previously forfeited pursuant to Section 8.1(b)).

(d) Notwithstanding any other provision in the Plan to the contrary, Section 5.I(b) shall not apply to a Rehired Employee who has a one or more one-year Breaks in Service as described in Section 8.2(c) above.

8.3 Rehired Participant. If a former Participant or a Participant, whose employment with the Advocate Companies had terminated, is reemployed by an Advocate Company (a "Rehired Participant"), the following provisions shall apply, notwithstanding any other provisions of the Plan:

(a) If a Rehired Participant is reemployed by an Advocate Company before he has incurred a one-year Break in Service, his employment with the Advocate Companies shall be deemed to have

continued without interruption for purposes of determining his Eligibility Service, Years of Vesting Service and Annuity Amounts.

(b) A Rehired Participant (nonvested or vested) who has one or more one-year Breaks in Service shall become an active Participant when he again meets the eligibility requirements in Section 3.1 (i.e., becomes a Covered Employee and completes one year of Eligibility Service). Such Rehired Participant shall accrue additional. Annuity Amounts in accordance with Section 5.I only after again becoming an active Participant as described in the foregoing sentence.

(c) If a nonvested Rehired Participant has one or more one-year Breaks in Service, but is later reemployed by an Advocate Company and becomes an active Participant (i.e., becomes a Covered Employee and completes one year of Eligibility Service) prior to incurring five consecutive one-year Breaks in Service, he shall be credited with (i) any of his prior Years of Vesting Service (not previously forfeited pursuant to Section 8.1(b)) and (ii) any of his prior Annuity Amounts (not previously forfeited pursuant to Section 8.1(c)).

(d) If a nonvested Rehired Participant has five or more consecutive one-year Breaks in Service, any prior Years of Vesting Service and Annuity Amounts shall be forfeited in accordance with Section 8.1(b) and (c).

(e) If a vested Rehired Participant has one or more one-year Breaks in Service and is later reemployed by an Advocate Company, he shall continue to be credited with (i) any of his prior Years of Vesting Service (not previously forfeited pursuant to Section

8.1(b)) and (ii) any of his prior Annuity Amounts (not previously forfeited pursuant to Section 8.I(c) or distributed pursuant to Section 7).

(f) Notwithstanding any other provision in the Plan to the contrary, Section 5.I(b) shall not apply to a Rehired Participant who has one or more one-year Breaks in Service as described in Sections 8.3(b), (c), (d) and (e) above.

8.4 Redetermination of Benefits. If a former Employee who is reemployed by an Advocate Company and who had previously participated in the Plan again becomes an active Participant in accordance with Sections 8.3(a) or (b), subject to the provisions of Section 7.8, no benefits shall be payable to him under the Plan during the period of his reemployment if he was not receiving benefits at the time of his reemployment. If the former Employee was receiving benefits at the time of his reemployment, payment of his benefits shall be suspended for any calendar month within the period of his reemployment during which he receives compensation for at least 40 Hours of Service. Benefits payable to or with respect to a Participant under the Plan after his period of reemployment ends shall be redetermined in accordance with the provisions of the Plan as then in effect; provided that such benefits shall be reduced by the actuarial equivalent of the benefits, if any, previously paid to the Participant under the Plan. In no event shall his redetermined benefits be less than the benefits he was receiving or entitled to receive under the Plan immediately prior to his reemployment. A Participant who retires and is reemployed and has benefits suspended as provided herein, will receive a suspension of benefits notice from the Plan by personal delivery or first class mail during the first

calendar month or payroll period immediately preceding the month during which he or she has benefits suspended. Such benefits notice shall include information about the suspension of benefits during continued employment and shall contain a description of the specific reason why benefit payments are suspended, a description of the Plan provisions governing suspension of benefits, a copy of such provisions and a statement to the effect that applicable Department of Labor regulations may be found at Section 2520.203-3 of the Code of Federal. Regulations. Benefits that have been suspended shall resume no later than the first day of the third calendar month after the calendar month in which the Participant ceases to be receiving compensation for at least 40 Hours of Service per month, and in the form received by the Participant prior to the suspension. The initial payment upon resumption shall include the payments schedule to occur in the calendar month when payments resume and any amounts withheld for each month following the last month in which the Participant received compensation for at least 40 Hours of Service and prior to the month in which the Plan benefits are resumed. Notwithstanding the foregoing, if a Participant begins receiving compensation for at least 40 Hours of Service on or after his or her Required Beginning Date (as defined in Section 7.8(f)(4)), the Participant may elect to continue to receive benefits from the Plan in lieu of having benefits suspended as described above.

ARTICLE 9
PENSION LIMITATIONS

9.1 Maximum Benefits. Notwithstanding any other provisions of the Plan, in no event may a Participant's Retirement Income or Deferred Vested Benefit provided under this Plan (together with any annual

pension provided for under all other defined benefit plans maintained by the Advocate Companies) exceed the maximum permissible annual benefit allowed under Code Section 415 and the regulations issued thereunder for a "limitation year" (which shall be the Plan Year).

9.2 Limits under Code Section 415(b). Notwithstanding any provisions of the Plan to the contrary, the maximum permissible annual benefit shall be as follows:

(a) Benefit Limitation. The maximum annual annuity payment under the Plan shall not exceed the lesser of:

(1) The dollar limit set forth in Code Section 415(b)(1)(A) (the "Dollar Limitation"). Effective for limitation years ending after December 31, 2001, the "Dollar Limitation" is $160,000, as adjusted for cost-of-living, under Code Section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity (which limit is $195,000 in 2009). A limitation as adjusted under Code Section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies; or

(2) One hundred percent (100%) of the Participant's average 415 Compensation during the three (3) consecutive calendar years during which the Participant's 415 Compensation was the greatest, including such period of time prior to participation in the Plan (or during the Participant's entire period of employment with the Advocate Companies, if less than 3 years) ("Compensation Limitation").

(b) Actuarial Adjustments for Application of Limitation.

(1) If a benefit is payable in any form other than a straight life annuity and such form is subject to Code Section 4I7(e)(3), the benefit shall be determined by adjusting such other form of benefit to the equivalent of a straight life annuity. This equivalent straight life annuity benefit shall be the greater of: (A) the equivalent straight life annuity computed using the interest rate and mortality table specified in Supplement A of the Plan (the "Plan Rate" and "Plan Mortality Table") and (B) the equivalent straight life annuity computed using an interest rate of 5% (5.5% for Plan Years beginning in 2004 and 2005) and the applicable mortality table described in Code Section 415(b)(2)(E)(v). Effective January 1, 2006, for purposes of this Section and applying the Code Section 4I5 limits where a benefit is payable in any form that is subject to Code Section 4I7(e)(3), in determining the equivalent straight life annuity, the interest rate used shall be the greatest of: (i) 5.5%; (ii) the rate that provides a benefit of not more than 105% of the benefit that would be provided if the applicable interest rate (as defined in Code Section 417(e)(3)) were the interest rate assumption; or (iii) the Plan Rate.

(2) If a benefit is payable in any form other than a straight life annuity and such form is not subject to Code Section 417(e)(3), the benefit shall be determined by adjusting such other form of benefit to the equivalent of a straight life annuity. This equivalent straight life annuity benefit shall be the greater of: (A) the equivalent straight life annuity computed using the Plan Rate and the

Plan Mortality Table and (B) the equivalent straight life annuity using an interest rate of 5% and the applicable mortality table described in Code Section 4I5(b)(2)(E)(v).

(3) No actuarial adjustment is required for a benefit that is not required to be converted to a straight life annuity pursuant to Code Section 4I5(b)(2)(B) which includes (i) a qualified joint and survivor form of benefit which is not the normal form of benefit; and (ii) benefits that are not directly related to retirement benefits (such as qualified disability benefits, pre-retirement death benefits, and postretirement medical benefits).

(c) Exception if Benefits Less Than $I0,000. If the annual benefits subject to this Section 9.2 payable to a participant under this Plan and under any related defined benefit plan do not exceed $10,000 for the Plan Year or any prior Plan Year and the Participant has not, at any time, participated in a defined contribution plan maintained by the Advocate Companies, the limitations of this Section 9.2 shall be deemed to be satisfied; provided, however, that the $10,000 limitation contained in the preceding provisions of this sentence shall be reduced as described in subsection (d) below if the Participant has less than ten years of service.

(d) Adjustment of Limitation for Participation and Service of Less Than 10 Years. If the Participant has fewer than I0 years of participation in the Plan, the Dollar Limitation shall be multiplied by a fraction, the numerator of which is his or.her years (or part thereof) of participation in the Plan, and the denominator of which is ten (I0). In the case of a Participant who has fewer than ten (10) Years of Vesting Service, the Compensation Limitation shall

be multiplied by a fraction, the numerator of which is the Participant's number of Years of Vesting Service (or part thereof), and the denominator of which is ten (10).

(e) Adjustment of Limitation For Commencement Prior to Age 62. If the benefit of a Participant begins prior to age 62, the Dollar Limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the Dollar Limitation applicable to the Participant at age 62 (as adjusted under Section 9.2(d), if required). The Dollar Limitation applicable at an age prior to age 62 is determined as the lesser of: (A) the actuarial equivalent straight life annuity computed using the Plan Rate and the Plan Mortality Table and (B) the actuarial equivalent straight life annuity using an interest rate of 5% and the applicable mortality table described in Code Section 4I5(b)(2)(E)(v). Any decrease in the Dollar Limitation determined in accordance with this paragraph (e) shall not reflect a mortality decrement to the extent that benefits will not be forfeited upon the death of the Participant.

(f) Adjustment of Limitation For Commencement After Age 65. If the benefit of a Participant begins after the Participant attains age 65, the Dollar Limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the Dollar Limitation applicable to the Participant at age 65 (as adjusted under Section 9.2(d), if required). The Dollar Limitation applicable at an age after age 65 is determined as the lesser of: (A) the actuarial equivalent straight

life annuity computed using the Plan Rate and the Plan Mortality Table and (B) the actuarial equivalent straight life annuity using an interest rate of 5% and the applicable mortality table described in Code Section 4I5(b)(2)(E)(v). For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

9.3 Preservation of Accrued Benefit. In the case of a Participant whose accrued benefit as of December 31, 1982 under the Plan was an amount in excess of $7,500 (but less than $II,368.75), the limitations of this Article 9 shall not be applied so as to limit the amount of Retirement Income such Participant had accrued as of December 31, 1982. If the current accrued benefit of an Employee who is a Participant as of the Effective Date exceeds the limitations of Code Section 4I5(b) (as modified by Section 9.2(d), (e) and (0), then, for purposes of Code Sections 415(b) and 415(e), the Dollar Limitation with respect to such Participant shall be equal to his current accrued benefit. The term "current accrued benefit" means a Participant's accrued benefit under the Plan, determined as if the Participant had separated from service on December 31, 1986, when expressed as an annual benefit within the meaning of Code Section 415(b)(2) (without regard to any cost of living adjustment occurring after May 5, 1986).

ARTICLE 10
ADMINISTRATION

10.1 Compensation Committee. The Board of Directors has appointed the Compensation Committee to be responsible for amending and administering the Plan. The Compensation Committee shall have sole discretionary authority within the limits provided by the Plan to do, or cause to be done by one or more

parties appointed by the Compensation Committee, the following:

(a) To appoint the members of the Administrative Committee and to monitor its performance;

(b) To communicate such information to the Administrative Committee, the Investment Committee, and the Trustee as each needs for the proper performance of its duties;

(c) To provide mechanisms through which the Administrative Committee and the Trustee can communicate with Participants and Beneficiaries;

(d) To perform such duties as are imposed by applicable law and to serve as the Administrative Committee in the absence of an appointed Administrative Committee; and

(e) To carry out such other powers, responsibilities and duties as may be assigned to it hereunder.

10.2 Finance Committee . The Board of Directors has appointed the Finance Committee to act on behalf of the Company in the management and control of the Plan assets and to recommend to the Board of Directors, for its approval, an investment policy consistent with the Plan objectives and the requirements of any applicable law (the "Investment Policy"). The Finance Committee shall have sole discretionary authority within the limits provided by the Plan to do, or cause to be done by one or more parties appointed by the Finance Committee, the following:

(a) To recommend an Investment Policy to the Board of Directors;

(b) To appoint the members of the Investment Committee and to monitor its performance;

(c) To communicate such information to the Investment Committee, and the Trustee as each needs for the proper performance of its duties;

(d) To perform such duties as are imposed by applicable law and to serve as the Investment Committee in the absence of an appointed Investment Committee; and

(e) To carry out such other powers, responsibilities and duties as may be assigned to it hereunder.

10.3 Pension Investment Committee. The Finance Committee has appointed the Pension Investment Committee (the "Investment Committee") to act on behalf of the Company in the management and control of the Plan assets consistent with the Investment Policy and the requirements of any applicable law. The Investment Committee shall have sole discretionary authority within the limits provided by the Plan to do, or cause to be done by one or more parties appointed by the Investment Committee, the following:

(a) To implement and monitor the Investment Policy.

(b) To exercise all powers granted to the Investment Committee as may be delegated to the Investment Committee by the Board of Directors or Finance Committee.

(c) To appoint one or more persons to serve as investment manager with respect to all or part of the Plan assets, including assets maintained under separate accounts of an insurance company.

(d) To allocate the responsibilities and authority being carried out by Investment Committee to any of its members.

(e) To take any action appropriate to assure that the Plan assets are invested for the exclusive purpose of providing benefits to Participants and their Beneficiaries in accordance with the Plan and defraying reasonable expenses of administering the Plan, subject to the requirements of any applicable law.

(f) To employ one or more persons to render advice with respect to any responsibility or authority being carried out by Investment Committee.

10.4 Administrative Committee. The Administrative Committee shall be a committee of at least three members who are appointed by the Compensation Committee (or its delegate) to be responsible for making certain Plan amendments as described in Section 13.1 and for the administration of the Plan as described in this Section I0.4. To the extent the Administrative Committee is exercising the powers, rights and duties allocated to it in this Section 10.4 or as otherwise specified in the Plan, the Administrative Committee shall be a "plan administrator" of the Plan (within the meaning of Code Section 414(g)), also referred to in the Plan as the Plan Administrator. Specifically, the Administrative Committee shall have the following powers, rights and duties:

(a) To determine all questions that arise concerning the construction and interpretation of the Plan and the administration of the Plan.

(b) To adopt such rules of procedure as may be necessary for the efficient administration of the Plan and as are consistent with its terms and such rules, and to construe, amend or revoke any such rules of procedure.

(c) To decide all questions of Plan eligibility, to determine the amount, manner and time of payment of any benefits under the Plan, to make determinations as to the right of any person to a benefit, to afford any person dissatisfied with such determination the right to a hearing thereon, to direct payments or distributions from the Trust in accordance with the provisions of the Plan, and to take any action it considers necessary to recover benefit payments made to or on behalf of Participants or Beneficiaries in error or on the basis of incorrect or incomplete information (including, without limitation, adjusting amounts of future benefit payments with respect thereto).

(d) To furnish the Employers with such information as may be required by them for tax or other purposes in connection with the Plan.

(e) To enroll Participants in the Plan, to distribute and receive Plan administration forms, and to comply with all applicable governmental reporting and disclosure requirements.

(f) To authorize and direct the payment of all Plan expenses.

(g) To appoint or employ agents, attorneys, accountants, actuaries or other persons/organizations (who also may be employed by the Employers, the Trustee, or any investment manager or managers) and to allocate or delegate to them such powers, rights and duties as the Administrative Committee considers necessary or advisable to properly carry out the administration of the Plan (including but not limited to the preparation of recommendations of actuarial assumptions which shall be reviewed by the Plan Administrator), provided that any such allocation or

delegation and the acceptance thereof must be in writing.

(h) To report to the Compensation Committee as to the administration of the Plan, any significant problems which have developed in connection with the administration of the Plan and any recommendations which the Plan Administrator may have as to the amendment of the Plan or the modification of Plan administration.

10.5 Trustee. The Investment Committee has the authority to appoint, remove and monitor the Trustee. The Trustee shall have the powers and duties set forth in the Trust Agreement.

10.6 Action by Administrative Committee. During a period in which two or more Administrative Committee members are acting, any action by the Administrative Committee will be subject to the following provisions:

(a) The Administrative Committee may act by meeting (including a meeting from different locations by telephone conference) or by document signed without meeting, and documents may be signed through the use of a single document or concurrent documents and through the use of electronic media.

(b) An Administrative Committee member by writing may delegate part or all of his rights, powers, duties and discretion to any other Administrative Committee member, with such other Administrative Committee member's consent.

(c) The Administrative Committee shall act either by a majority decision provided a majority of the Administrative Committee members must be present, which action shall be as effective as if such action had been taken by all members of the

Administrative Committee; provided that by majority action one or more Administrative Committee members or other persons may be authorized to act with respect to particular matters on behalf of all Administrative Committee members or by unanimous written consent.

(d) If there is an equal division among the Administrative Committee members with respect to any questions, a disinterested party may be selected by a majority vote to decide the matter. Any decision by such disinterested party will be binding.

(e) The certificate of the secretary of the Administrative Committee or the majority of the Administrative Committee members that the Administrative Committee has taken or authorized any action shall be conclusive in favor of any person relying on such certificate.

(f) The Administrative Committee may establish a charter to provide for such additional operational rules as the Administrative Committee determines are necessary and appropriate, including, but not limited to, provision for the appointment of a chairperson and/or secretary of the Administrative Committee.

(g) Except as required by law, no member of the Administrative Committee shall be liable or responsible for an act or omission of other Administrative Committee members in which the former has not concurred.

10.7 Information Required for Plan Administration. The Employers shall furnish the Plan Administrator with such data and information as the Plan Administrator considers necessary or desirable to perform its duties with respect to Plan administration. The

records of an Employer as to an Employee's or Participant's period or periods of employment, termination of employment and the reason therefor, leaves of absence, reemployment, and compensation will be conclusive on all persons unless determined to the Plan Administrator's satisfaction to be incorrect. Participants and other persons entitled to benefits under the Plan also shall furnish the Plan Administrator with such evidence, data or information as the Plan Administrator considers necessary or desirable for the Plan Administrator to perform his duties with respect to Plan administration.

10.8 Decision of Plan Administrator Final. The Plan Administrator shall have sole discretionary authority to interpret the Plan and determine conclusively all questions arising in the administration, interpretation, and application of the Plan. Decisions of the Plan Administrator, including decisions regarding claims for benefits, shall be final and binding on all persons. A misstatement or other mistake of fact shall be corrected when it becomes known, and the Plan Administrator shall make such adjustment on account thereof as the Plan Administrator considers equitable and practicable

10.9 Uniform Rules. The Plan Administrator shall perform his duties with respect to Plan administration on a reasonable and nondiscriminatory basis and shall apply uniform rules to all Participants similarly situated.

10.10 Expenses. All costs, charges and expenses reasonably incurred in the administration of the Plan and Trust will be paid by the Trust, to the extent permitted by applicable law, unless paid by the Employers in such portions as the Compensation Committee shall direct; provided, however, that no compensation will be paid to an Administrative

Committee member solely for his service on the Administrative Committee.

10.11 Interested Plan Administrator. If a member of the Administrative Committee is also a Participant in the Plan, he may not decide or determine any matter or question concerning the distribution, nature or method of settlement of his own benefits under the Plan unless such decision or determination could be made by him under the Plan if he were not an Administrative Committee member.

10.12 Resignation or Removal of Plan Administrative Committee Members. A member of the Administrative Committee may be removed by the Compensation Committee at any time by giving ten days' prior notice to the Compensation Committee and the other members of the Administrative Committee. A member of the Administrative Committee may resign at any time by giving ten days prior written notice to the Compensation Committee and the other members of the Administrative Committee. Membership on the Administrative Committee shall terminate automatically when a member's employment terminates. The Compensation Committee may fill any vacancy in the membership of the Administrative Committee; provided, however, that if a vacancy reduces the membership of the Administrative Committee to less than three, such vacancy shall be filled as soon as practicable. The Compensation Committee shall give prompt written notice thereof to the other members of the Administrative Committee. Until any such vacancy is tilled, the remaining members may exercise all of the powers, rights and duties conferred on the Administrative Committee as Plan Administrator.

10.13 Indemnification. . To the extent permitted by law, the members of the Compensation Committee, Investment Committee, Administrative Committee, and all directors, officers, Employees, agents and representatives of the Employers shall be indemnified and saved harmless by the Employers for all liability, joint or several, for their acts and omissions done in good faith in the administration and operation of the Plan or the investment of the Pension Fund. These individuals shall also be indemnified by the Employers against all costs and expenses reasonably incurred by them in connection with the defense of any action, suit or proceeding in which they may be made party defendant, including the cost of reasonable settlements (other than amounts paid to an Employer) made to avoid costs of litigation and payment of any judgment or decree entered in such action, suit or proceeding. The Employers shall not, however, indemnify these individuals with respect to any act finally adjudicated to have been caused by their willful misconduct or with respect to the cost of any settlement unless the settlement has been approved by a court of competent jurisdiction. The right of indemnification shall not be exclusive of any other right to which these individuals may be legally entitled and it shall inure to the benefit of their duly appointed legal representatives. The Employers may choose, at their own expenses, to purchase and keep in effect sufficient liability insurance or other indemnification arrangement to cover any claims, losses, damages, expenses and liabilities arising from any action or failure to act by any such individual.

ARTICLE II
CLAIMS PROCEDURES

11.1 Submission of Claim.

(a) Claimant. Any Participant or beneficiary thereof (a "Claimant") may file a claim for benefits under the Plan in writing with the person or entity designated in any applicable insurance contract or appointed by the Plan Administrator (or, if no such person or entity, the Plan Administrator) to receive and process claims (the "Claims Administrator") in such manner as prescribed by the Claims Administrator.

(b) Authorized Representative. Nothing in this Article 11 shall preclude an authorized representative of a Claimant from acting on behalf of such Claimant in pursuing a benefit claim or appeal of an "adverse benefit determination" (as such term is defined in Section 11.5). The Plan Administrator shall establish reasonable procedures for determining whether an individual has been authorized to act on behalf of such Claimant.

11.2 Review of Claim. The Claims Administrator shall review all claims for benefits under the Plan and make claim determinations in accordance with the terms of the Plan and other governing Plan documents and shall apply such Plan provisions consistently with respect to similarly situated Claimants.

11.3 Notification of Benefit Determination.

(a) The Claims Administrator (or its designated agent) shall process a Claimant's claim for benefits under the Plan and provide notice to the Claimant of any adverse benefit determination within 90 days after the date the claim is received by the Claims Administrator. If special circumstances arise and the Claims Administrator determines that an extension of time for processing the claim is required, written notice of the extension shall be furnished to

the Claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which a benefit determination is expected to be rendered.

(1) The Claims Administrator shall provide a Claimant with written or electronic notification of any adverse benefit determination. Any electronic notification shall comply with Section 2520.104b-1(c)(1)(i), (iii) and (iv) of the Department of Labor regulations. The notification shall set forth, in a manner calculated to be understood by the Claimant:

(A) The specific reason or reasons for the adverse determination;

(B) Reference to the specific Plan provisions on which the determination is based;

(C) A description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary; and

(D) A description of the Plan's review procedures and the time limits applicable to such procedures.

(2) For purposes of this Section 113, the period of time within which a benefit determination is required to be made shall begin at the time the claim is filed in accordance with the procedures of the Plan (including any applicable insurance contracts, service agreements or similar documents) without regard to whether all the information

necessary to make a benefit determination accompanies the filing. In the event that a period of time is extended as permitted in this Section 11.3 due to a Claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the Claimant until the date on which the Claimant responds to the request for additional information.

11.4 Appeals Process.

(a) Appeal of Adverse Benefit Determination. A Claimant shall have a reasonably opportunity to appeal an adverse benefit determination to the Plan Administrator, and the Plan Administrator shall conduct a full and fair review of the adverse benefit determination. The Claimant shall have the opportunity to make a single appeal pursuant to the procedures herein. To ensure a full and fair review of such appeals, a Claimant shall have:

(1) at least 60 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(2) the opportunity to submit written comments, documents, records and other information relating to the claim for benefits;

(3) upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits. A document, record or other information shall be considered relevant to a Claimant's claim for benefits if such document, record or other information:

(A) was relied on in making the benefit determination;

(B) was submitted, considered or generated in the course of making the benefit determination, without regard to whether such document, record or other information was relied upon in making the benefit determination; or

(C) demonstrates compliance with the administrative processes and safeguards required pursuant to this Section 11.4 in making the benefit determination; and

(4) A review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(b) Timing of Benefit Determination on Appeal.

(1) The Plan Administrator shall notify a Claimant in accordance with Section 11.5(a) of the Plan's benefit determination on review within a reasonable period of time, but not later than 60 days after receipt of the Claimant's request for review by the Plan. If special circumstances arise and the Plan Administrator determines that an extension of time for processing the claim is required, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial 60-day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review.

(2) If the Plan Administrator holds regularly scheduled meetings at least quarterly, Section 11.4(b)(1) shall not apply and the Plan Administrator shall instead make a benefit determination no later than the date of the meeting of the Plan Administrator that immediately follows the Plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting of the Plan Administrator following the Plan's receipt of request for review. If special circumstances require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the Plan Administrator following the Plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the Plan Administrator shall provide the Claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The Plan Administrator shall notify the Claimant, in accordance with Section 11.4(a), of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(c) Calculating time periods. For purposes of this Section 11.4, the period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in accordance with the Plan procedures, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing.

(d) Furnishing Documents. In the case of an adverse benefit determination on review, the Plan Administrator shall provide such access to, and copies of, documents, records and other information described in Section 11.4(e) as appropriate.

(e) Manner and Content of Notification of Benefit Determination on Review. The Plan Administrator shall provide a Claimant with written or electronic notification of the Plan's benefit determination on review. Any electronic notification shall comply with Section 2520.104b-1(c)(1)(i), (iii) and (iv) of the Department of Labor regulations. In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the Claimant:

(1) The specific reason or reasons for the adverse determination;

(2) Reference to the specific Plan provisions on which the benefit determination is based;

(3) A statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the Claimant's claim for benefits. Whether a document, record or other information is relevant to a claim for benefits shall be determined by reference to Section 11.4(a)(3); and

(4) A statement describing any voluntary appeal procedures that may be established by the Plan Administrator and the Claimant's right to obtain specific information about such procedures to enable the Claimant to make an informed judgment about whether to submit a benefit dispute to the voluntary level of appeal, including a

statement that the decision of a Claimant as to whether or not to submit a benefit dispute to the voluntary level of appeal will have no effect on the claimant's rights to any other benefits under the Plan and information about the applicable rules, the Claimant's right to representation, the process for selecting the decisionmaker, and the circumstances, if any, that may affect the impartiality of the decisionmaker, such as any financial or personal interests in the result or any past or present relationship with any party to the review process.

11.5 Limitations on Claims. A Claimant shall have no right to bring any action at law or in equity regarding a claim for benefits, unless and until he or she exhausts his or her rights to review under Sections 11.3 and 11.4 in accordance with the time frames set forth therein. No action at law or in equity shall be brought to recover benefits under the Plan later than two years from the date of the Plan Administrator's final determination following a Claimant's administrative appeal of a denial of benefits made under Section 11.4. Notwithstanding the foregoing, if the applicable, analogous Illinois statute of limitations has run or will run before the aforementioned two-year period, the Illinois statute of limitations is controlling. No action at law or in equity shall be brought in connection with the Plan except in the circuit courts for DuPage County, Illinois or, if federal jurisdiction is available, in the Northern District of Illinois, Eastern Division.

11.6 Definitions. As used in this Article 11:

(a) Adverse Benefit Determination. The term "adverse benefit determination" means any of the following: a denial, reduction, or termination of, or

failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a Participant's or Beneficiary's eligibility to participate in the Plan.

(b) Notice. The term "notice" or "notification" means the delivery or furnishing of information to an individual in a manner that satisfies Section 2520.104b-1(b) of the Department of Labor regulations, as appropriate, with respect to any material to be furnished or made available to an individual as provided in this Article 11.

ARTICLE 12
RELATING TO THE EMPLOYERS

12.1 Action by Employers. Any action required or permitted of an Employer under the Plan shall be by resolution of its board of directors or by a duly authorized committee of its board of directors, or by a person or persons authorized by resolution of its board of directors or such committee.

12.2 Additional Employers. Any Related Company that is not an Employer may adopt the Plan and become an Employer by filing with the Trustees and the Plan Administrator a certified copy of a resolution of the board of directors of the Related Company providing for its adoption of the Plan and a certified copy of a resolution of the Board of Directors consenting to such adoption.

12.3 Restrictions on Reversions. The Employers shall have no right, title or interest in the assets of the Plan, nor will any part of the assets of the Plan at any time revert or be repaid to an Employer, directly or indirectly, except as follows:

(a) If the Internal Revenue Service initially determines that the Plan, as applied to any Employer, does not meet the requirements of a "qualified plan" under Code Section 401(a), the assets of the Plan attributable to contributions made by that Employer shall be returned to that Employer within one year of the date of denial of qualification of the Plan as applied to that Employer.

(b) If a contribution or a portion of a contribution is made by a Employer as a result of a mistake of fact, such contribution or portion of a contribution shall not be considered to have been contributed under the Plan by that Employer and, after having been reduced by any losses of the Pension Fund allocable thereto, shall be returned to that Employer within one year of the date the amount is contributed under the Plan.

(c) Each contribution made by a Employer is conditioned upon, to the extent applicable, the deductibility of such contribution as an expense for federal income tax purposes and, therefore, to the extent that a contribution is made by a Employer under the Plan for a period for which the deduction for a contribution made by the Employer is disallowed, then such contribution or portion of a contribution, after having been reduced by any losses of the Pension Fund allocable thereto, shall be returned to that Employer within one year of the date of disallowance of the deduction.

(d) If after all fixed and contingent liabilities or obligations to persons entitled to benefits under the Plan shall have been paid or provided for in full any Plan assets remain because of erroneous actuarial computation, such assets shall be returned to the Company.

ARTICLE 13
AMENDMENT, TERMINATION OR PLAN MERGER

13.1 Amendment.

(a) While the Company expects and intends to continue the Plan, the Company must necessarily reserve and hereby does reserve the right, subject to Section 12.3, to amend the Plan, by action of the Compensation Committee, from time to time, except the duties and liabilities of the Plan Administrator cannot be changed substantially without its consent.

(b) The Compensation Committee may delegate to the Administrative Committee the authority to approve amendments to the Plan which (1) are legally required or (2) in the judgment of the Administrative Committee, (A) do not significantly increase the cost of administering or funding the Plan and (B) do not significantly change the design of the Plan in a manner which significantly impacts the Participants in the Plan.

(c) The foregoing provisions of this Section 13.1 shall be subject to any applicable collective bargaining agreements, provided that the Company may amend the Plan at any time to the extent necessary in order that the Plan shall meet the requirements of a "qualified plan" under Code Section 401(a) and any other requirements of applicable law.

13.2 Termination. The Plan will terminate as to all Employers on any date specified by the Company if advance written notice of the termination is given to the Plan Administrator and any other Employers. The Plan will terminate as to an individual Employer on the first to occur of the following:

(a) The date it is terminated by such Employer, if ten days' advance written notice of the termination is given to the Company, the Plan Administrator and the other Employers.

(b) The date such employer is judicially declared bankrupt or insolvent.

(c) The dissolution, merger, consolidation or reorganization of such Employer, or the sale by that Employer of all or substantially all of its assets, except that:

(1) In any such event arrangements may be made with the consent of the company whereby the Plan will be continued by any successor to such Employer or any purchaser of all or substantially all of its assets without a termination thereof, in which case the successor or purchaser will be substituted for such. Employer under the Plan; and

(2) If any Employer is merged, dissolved or in any way reorganized into, or consolidated with, any other Employer, the Plan as applied to the former Employer will automatically continue in effect without a termination thereof.

Notwithstanding the foregoing, if any of the events described above should occur but some or all of the Participants employed by an Employer are transferred to employment with one or more of the other Employers coincident with or immediately after the occurrence of such event, the Plan as applied to those Participants will automatically continue in effect without a termination thereof. The foregoing provisions of this Section shall be subject to any applicable collective bargaining agreements.

13.3 Plan Merger. In no event shall there be any merger or consolidation of the Plan with, or transfer of assets or liabilities to, any other Plan unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit the Participant would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

13.4 Continuation by a Successor or Purchaser. Notwithstanding Section 13.2, the Plan and the Trust shall not terminate in the event of dissolution, merger, consolidation or reorganization of an Employer or sale by an Employer of its entire assets or substantially all of its assets if arrangements are made in writing between the Employer and any successor to the Employer or purchaser of all or substantially all of its assets whereby such successor or purchaser will continue the Plan and the Trust. If such arrangements are made, then such successor or purchaser shall be substituted for the Employer under the Plan and the trust agreement.

13.5 Vesting and Distribution on Termination. On termination or partial termination of the Plan as respects all Employers (and, at the discretion of the Company, on a termination or partial termination of the Plan as respects any Employer that does not result in the termination or partial termination of the Plan as respects all Employers), the rights of all affected Employees to benefits accrued to the date of such termination shall be nonforfeitable, but in such event such affected Employees and other Participants and other persons entitled to benefits under the Plan who are affected by such event shall have no recourse

towards the satisfaction of their nonforfeitable benefits from other than the assets allocable to them under Article 15. Notwithstanding the above, the benefits provided upon Plan termination to any Highly Compensated Employee or former Highly Compensated Employee shall be limited to a benefit that is nondiscriminatory within the meaning of Code Section 401(a)(4).

ARTICLE 14
FUNDING OF PLAN BENEFITS

14.1 Employer Contributions. Subject to the provisions of this Article 14, the Employers expect and intend to make contributions under the Plan from time to time of such amounts as are required under accepted actuarial principles to maintain the Plan in a sound condition and-to meet all applicable funding requirements imposed by federal law. The method of valuation used to calculate the cost of the Plan for purposes of this Section and the actuarial assumptions applied in regard to such method of valuation shall be determined from time to time by the Company, subject to applicable law.

14.2 Pension Fund. A "Pension Fund" will be maintained in order to implement and carry out the provisions of the Plan and to fund benefits payable under the Plan. The Pension Fund from time to time shall consist of one or more funds established through one or more insurance contracts or trust agreements, or through a combination of insurance contracts and trust agreements, as determined by the company. The Pension Fund shall be maintained for the purposes of receiving and holding contributions to the Plan and interest and other income thereon and paying benefits provided under the Plan. The Company shall determine the form and terms of each insurance contract

and trust agreement and from time to time may direct the transfer of amounts held in any such fund to any other such fund in accordance with the provisions of the applicable trust agreements or insurance contracts. Sonic or all of the assets of this Plan may be deposited in Advocate Health Care Network Master Pension Trust and the trust committee acting under such trust agreement shall have investment responsibility over the assets so deposited. Subject to applicable law, benefits provided through any insurance contract will be paid in accordance with its terms and conditions.

14.3 Application of Forfeited Benefits. Benefits that would have been payable to a Participant if his employment with the Advocate Companies had not terminated before he was eligible to receive Retirement Income or a Deferred Vested Benefit, and benefits that would have been payable to the Participant or any other person but for the Participant's death, shall not be applied to increase the benefits of any other Participants or other persons. However, the limitation contained in the next preceding sentence shall not in any way limit the right reserved to the Company under Section 13.1 to amend the Plan to provide for increases or decreases in the amount of benefits or to modify the form of any benefits payable under the Plan.

ARTICLE 15
ALLOCATION AND DISTRIBUTION ON TERMINATION

On termination or partial termination of the Plan as respects all Employers (and, at the discretion of the Company, on a termination or partial termination of the Plan as respects any Employer that does not result in the termination or partial termination of the Plan as respects all Employers), the Plan Administrator

will direct the allocation and distribution of Plan assets allocable to Participants employed by that Employer with respect to whom the Plan is terminated, to retired or terminated Participants, and to spouses and other persons entitled to benefits under the Plan as joint annuitants, to the extent their benefits are attributable to employment with that Employer. After payment of any expenses of administration and liquidation allocable to such Plan assets, such Plan assets remaining shall be allocated and distributed to such Participants and other persons to provide their benefits accrued to the date of Plan termination, to the extent of the sufficiency of the Plan assets, in accordance with the provisions of ERISA Section 4044, as amended, as if the provisions of ERISA Section 4044 applied to the Plan.

ARTICLE 16
RESTRICTIONS ON BENEFITS

16.1 Pre-Termination Restrictions. This Article 16 shall be effective for distributions commencing on or after January 1, 1994. In the event of the termination of the Plan, as provided in Section 13.2, the benefit of any Highly Compensated Employee and any former Highly Compensated. Employee will be limited to a benefit that is nondiscriminatory under Code Section 401(a)(4).

16.2 Restriction of Benefits. Annual payments to a "Restricted Employee" shall be restricted such that the annual payments are no greater than an amount equal in each year to the payments that would be made on behalf of the Restricted Employee under (i) a straight life annuity that is the actuarial equivalent of the accrued benefit and other benefits to which the Restricted Employee is entitled under the Plan (other than a Social Security supplement), and (ii) a Social

Security supplement, if any, that the Restricted Employee is entitled to receive; provided, however, that the foregoing restrictions shall not apply if any one of the following requirements is satisfied:

(a) The value of Plan assets remaining after payment of all benefits payable to the Restricted Employee equals or exceeds 110 percent of the target liability of the Plan, as determined in accordance with applicable Code provisions;

(b) The value of the benefits payable to the Restricted Employee from the Plan is less than one percent of the value of current liabilities of the Plan as determined before distribution to such Restricted Employee; or

(c) The value of the benefits payable to the Restricted Employee from the Plan does not exceed the amount described in Code Section 411(a)(11)(A).

For purposes of this Article 16, a "Restricted Employee" is a Highly Compensated Employee or former Highly Compensated Employee; provided that, in any Plan Year, no more than 25 Employees will be Restricted Employees, and those Employees who are Restricted Employees will be those Highly Compensated Employees and former Highly Compensated Employees with the greatest compensation (as reported on the applicable Form W-2 for the Employee) in the current or any prior Plan Year. The value of benefits payable to a Restricted Employee and the current liabilities of the Plan shall be determined in accordance with Treasury Regulation Section 1.401(a)(4)-5 or any substitute therefor.

ARTICLE 17
GENERAL PROVISIONS

17.1 Examination of Plan Documents. Copies of the Plan and any amendments thereto will be on file at the principal office of the Company where they may be examined by any Participant or any other person entitled to benefits under the Plan.

17.2 Notices. A notice mailed to a Participant or Beneficiary at his last address filed with the Plan Administrator in care of the Company will be binding on the Participant or Beneficiary for all purposes of the Plan. Any notice or document relating to the Plan required to be given to or filed with the Plan Administrator or any Employer shall be considered as given or filed if delivered or mailed by registered or certified mail, postage prepaid, to the Plan Administrator, in care of the Company at 2025 Windsor Drive, Oak Brook, Illinois 60523.

17.3 Nonalienation of Plan Benefits. The rights or interests of any Participant or Beneficiary to any benefits or future payments under the Plan shall not be subject to attachment or garnishment or other legal process by any creditor of any such. Participant or Beneficiary (except as may be required by the tax withholding or tax levy provisions of the Code or of a state's income tax act) nor shall any such Participant or Beneficiary have any right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or rights which he may expect to receive, contingently or otherwise under this Plan. Notwithstanding the foregoing, this Section 17.3 shall not apply to a "qualified domestic relations order," as defined in Code Section 414-(p), a judgment, order, decree or settlement agreement described in Code Section 401(a)(13)(c),

and issued or entered into on or after August 5, 1997, or as otherwise permitted by applicable law.

17.4 No Employment Guarantee. None of the establishment of the Plan, modification thereof, the creation of any fund or account, or the payment of any benefits shall be construed as giving to any Participant or other person any legal or equitable right against the Employers, the Plan Administrator or trustees, except as herein provided. Under no circumstances shall the terms of employment of any Participant be modified or in any way affected hereby. The maintenance of this Plan shall not constitute a contract of employment, and participation in the Plan will not give any Participant a right to be retained in the employ of the Employers. None of the Employers, the Plan Administrator or the trustees in any way guarantees any assets of the Plan from loss or depreciation or any payment to any person. The liability of the Plan Administrator or any Employer as to any payment or distribution of benefits under the Plan is limited to the available assets of the Pension Fund.

17.5 Participant Litigation. In any action or proceeding regarding the Plan assets (or any portion thereof), any Plan benefit, or regarding the administration of the Plan, Employees, former Employees, Beneficiaries and any other persons having or claiming to have an interest in this Plan shall not be necessary parties and shall not be entitled to any notice or process. Any final judgment which is not appealed or appealable and may be entered in any such action or proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have any interest in this Plan. To the extent permitted by law, if a legal action is brought against the Employers, the Plan Administrator and/or

the Trustees by or on behalf of any person, and such action results adversely to such person, or if a legal action arises because of conflicting claims to a Participant's or other person's benefits, the costs to the Employers, the Plan Administrator or the Trustees in defending the action will be charged to the sums, if any, which were involved in the action or were payable to the Participant or other person concerned. To the extent permitted by applicable law, acceptance of participation in this Plan shall constitute a release of the Employers, the Plan Administrator, the Trustees and their respective agents from any and all liability and obligation not involving willful misconduct or gross neglect. Notwithstanding any other provisions of the Plan, if the Plan Administrator is required by a final court order to distribute the benefits of a Participant other than in a manner required under the Plan, then the Plan Administrator shall cause the Participant's benefits to be distributed in a manner consistent with such final court order. The Plan Administrator shall not be required to comply with the requirements of a final court order in an action in which the Plan Administrator, the Trustees, the Plan or the Pension Fund was not a party, except to the extent that such final court order is qualified domestic relations order (as defined in Code Section 414(p)).

17.6 Successors. The Plan and the Pension Fund will be binding on all persons entitled to benefits hereunder and their respective heirs and legal representatives, and on the Plan Administrator, the Trustees and their respective successors.

17.7 Adequacy of Evidence. Evidence which is required of anyone under the Plan shall be executed or presented by the proper individuals or parties and may be in the form of certificates, affidavits,

documents or other information which the Plan Administrator, the Trustees, the Employers or other persons acting on such evidence considers pertinent and reliable.

17.8 Gender and Number. Words denoting the masculine gender shall include the feminine and neuter genders and the singular shall include the plural and the plural shall include the singular wherever required by the context.

17.9 Waiver of Notice. Any notice required under the Plan may be waived by the person entitled to notice.

17.10 Applicable Law. The Plan and the Pension Fund shall be construed in accordance with the provisions of the Code and other applicable federal laws. To the extent not inconsistent with such laws, this Plan shall be construed in accordance with the laws of the State of Illinois.

17.11 Severability. If any provision of the Plan shall be held illegal or invalid for any reason, such illegal or invalid provision shall not affect the remaining provisions of the Plan, and the Plan shall be construed and enforced as if such illegal or invalid provisions had never been contained in the Plan.

17.12 Fiduciary Responsibilities. It is specifically intended that all provisions of the Plan shall be applied so that all fiduciaries with respect to the Plan shall be required to meet the prudence and other requirements and responsibilities of applicable law to the extent such requirements of responsibilities apply to them. No provisions of the Plan are intended to relieve a fiduciary from any responsibility, obligation, duty or liability imposed by applicable law. In general, a fiduciary shall discharge his duties with respect to

the Plan solely in the interests of Participants and other persons entitled to benefits under the Plan and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

17.13 Use of Electronic Media. To the extent permitted by law and subject to approval of the Plan Administrator, a Participant or beneficiary may use electronic media to conduct transactions with the Plan.

ARTICLE 18
TOP-HEAVY PLAN RULES

18.1 Application of Rules. The provisions set forth in this Article 18 shall become effective for any Plan Years with respect to which the Plan is determined to be a Top-Heavy Plan and shall supersede any other provisions of the Plan that are inconsistent with these provisions; provided, however, that if the Plan is determined not to be a Top-Heavy Plan in. any Plan Year subsequent to any Plan Year in which the Plan was a Top-Heavy Plan, the provisions of this Article 18 shall not apply with respect to such subsequent Plan Year; and, provided further, to the extent that any of the requirements of this Article 18 shall no longer be required under Code Section 416 or any other Code Section, such requirements shall be of no force or effect.

18.2 Definitions. For purposes of this Article 18, the following definitions shall apply:

(a) "Compensation" means a Participant's 415 Compensation.

(b) "Determination Date" means with respect to any Plan Year, the last day of the preceding Plan Year.

(c) "Key Employee" means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the Determination Date was an officer of an Employer having annual Compensation greater than $130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of an Employer, or a 1-percent owner of an Employer having annual Compensation of more than $150,000. The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder

(d) "Top-Heavy Plan." For any Plan Year, the Plan will be a "Top-Heavy Plan" if any of the following conditions exist:

(1) If the Top-Heavy Ratio for the Plan exceeds 60 percent and the Plan is not part of any Required Aggregation Group.

(2) If the Plan is part of a Required Aggregation Group but not part of a Permissive Aggregation Group and the Top-Heavy Ratio for the Required Aggregation Group exceeds 60 percent.

(3) If the Plan is part of a Required Aggregation Group and part of a Permissive Aggregation Group and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds 60 percent.

(e) "Top-Heavy Ratio" shall be determined in accordance with Code Section 416 and the regulations thereunder and shall be a fraction, the numerator of which is (1) and the denominator of which is (2):

(1) The numerator shall equal the sum of all of the following amounts calculated as of the Determination Date; provided, however, the accrued benefits and accounts of any individual who has not performed services for an Employer during the one-year period ending on the Determination Date shall not be taken into account:

(A) present value of accrued benefits of all Key Employees under the Plan and any other defined benefit plan maintained by an Employer which is included in a Required Aggregation Group or Permissive Aggregation Group, as applicable;

(B) account balances for all Key Employees under any defined contribution plan maintained by an Employer which is included in a Required Aggregation Group or Permissive Aggregation Group, as applicable; and

(C) distributions made with respect to all Key Employees under the Plan and any plan aggregated with the Plan under Code Section 416(g)(2) during the one-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated Plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). Notwithstanding the foregoing, in the case of a distribution made for a reason other than severance from employment,

death or disability, this provision shall be applied by substituting "five-year period" for "one-year period."

(2) The denominator shall equal the sum of all of the following amounts calculated as of the Determination Date; provided, however, the accrued benefits and accounts of any individual who has not performed services for an Employer during the one-year period ending on the Determination Date shall not be taken into account;

(A) present value of accrued benefits of all Employees under the Plan and any other defined benefit plan maintained by an Employer which is included in a Required Aggregation Group or Permissive Aggregation Group, as applicable;

(B) account balances for all Employees under any defined contribution plan maintained by an Employer which is included in a Required Aggregation Group or Permissive Aggregation Group, as applicable; and

(C) distributions made with respect to all Employees under the Plan and any plan aggregated with the Plan under Code Section 416(g)(2) during the one-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated Plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). Notwithstanding the foregoing, in the case of a distribution made for a reason other than severance from employment, death or disability, this provision shall be applied by substituting "five-year period" for "one-year period."

For purposes of this Section 18.2(e), the accrued benefit of an Employee other than a Key Employee shall be determined under the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employers or, if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code Section 411(b)(1)(C).

(f) "Permissive Aggregation Group" means the required aggregation group of Plans plus any other plan or plans of the Employers which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Code Sections 401(a)(4) and 410.

(g) "Required Aggregation Group" means (1) each qualified plan of the Employers in which at least one Key Employee participates or participated at any time during the determination period (regardless of whether the Plan has terminated), and (2) any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of Code Section 401(a)(4) or Code Section 410.

(h) "Present value" shall be based only on the interest rate and mortality table specified in the defined benefit plan for this purpose.

18.3 Special Top-Heavy Vesting Schedule. Notwithstanding the provisions of Article 6, an Employee shall be eligible for a Deferred Vested Benefit equal to his vested percentage, determined in accordance with the following table based on his Years of Vesting Service, of the monthly deferred vested benefit he otherwise would be entitled to under Section 7.1:

If the Participant's Number of Years of Service Equals:	His Vested Percentage Shall be:
Less than 2	0%
2	20%
3	40%
4	60%
5 or more	100%

18.4 Change in Top-Heavy Status. In the event the vesting provisions provided in Section 6.1 are amended, or changed on account of the Plan becoming or ceasing to be a Top-Heavy Plan, any Participant who has completed at least three Years of Vesting Service may elect to have the amount of his Deferred Vested. Benefit computed under the Plan without regard to such amendment or change by notifying the Plan Administrator in writing within the election period hereinafter described. The election period shall begin on the date such amendment is adopted or the date such change is effective, as the case may be, and shall end no earlier than the latest of the following dates: (i) the date which is 60 days after the day such amendment is adopted; (ii) the date which is 60 days after the day such amendment or change becomes effective; or (iii) the date which is 60 days after the day the Participant is given written notice of such amendment or change by the Plan Administrator. Any election made pursuant to this Section 18.4 shall be irrevocable.

18.5 Top-Heavy Minimum Benefit. Notwithstanding the provisions of Article 5, a Participant's Retirement Income expressed as a life annuity commencing at his Normal Retirement Age shall not be less than an amount equal to 1/12th of 3.0 percent of his average

annual Earnings for the Testing Period multiplied by the aggregate of his full and fractional years of Vesting Service (not in excess of ten such years) in all Plan Years in which the Plan is considered a Top-Heavy Plan. For this purpose, the "testing period" shall mean a period of five consecutive years (or the actual number of consecutive years if less than five) during which the Participant had the greatest total Earnings and which commenced in Plan Years during which the Plan is considered a Top-Heavy Plan. The minimum accrued benefit required (to the extent required to be nonforfeitable under Code Section 416(b)) may not be forfeited under Code Section 411(a)(3)(B) or 411(a)(3)(D). Notwithstanding any provision herein to the contrary, for purposes of this Section 18.5 and satisfying the minimum benefit requirements of Code Section 416(c)(1), in determining Years of Vesting Service with the Employers, any service with the Employers shall be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of Code Section 410(b)) no Key Employee or former Key Employee.

THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

Civil No. 14-cv-01873

MARIA STAPLETON, JUDITH LUKAS, SHARON ROBERTS and ANTOINE FOX on behalf of themselves, individually, and on behalf of all others similarly situated, and on behalf of the Advocate Plan,

Plaintiffs,

v.

ADVOCATE HEALTH CARE NETWORK AND SUBSIDIARIES, an Illinois Non-profit Corporation, ADVOCATE HEALTH CARE NETWORK, an Illinois Non-profit Corporation, KEVIN R. BRADY, an individual, THE BENEFIT PLAN ADMINISTRATIVE COMMITTEE FOR CHURCH PLANS OF ADVOCATE HEALTH CARE NETWORK, JOHN and JANE DOES 1-20, MEMBERS OF THE BENEFIT PLAN ADMINISTRATIVE COMMITTEE FOR CHURCH PLANS OF ADVOCATE HEALTH CARE NETWORK, each an individual, THE COMPENSATION AND BENEFITS COMMITTEE OF THE BOARD OF DIRECTORS OF ADVOCATE HEALTH CARE NETWORK, JOHN and JANE DOES 21-40, MEMBERS OF THE COMPENSATION AND BENEFITS COMMITTEE OF THE BOARD OF DIRECTORS OF ADVOCATE HEALTH CARE NETWORK, each an individual, and JOHN and JANE DOES 41- 60, each an individual,

Defendants.

CLASS ACTION COMPLAINT
CLAIM OF UNCONSTITUTIONALITY

JURY TRIAL DEMANDED

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Plaintiffs Maria Stapleton, Judith Lukas, Sharon Roberts and Antoine Fox, individually and on behalf of all those similarly situated, as well as on behalf of the Advocate Plan, as defined herein, by and through their attorneys, hereby allege as follows:

I. INTRODUCTION

1. Defendant Advocate Health Care Network and Subsidiaries, by and through its subsidiaries and/or affiliates ("Advocate" or "Defendant"), operates a hospital conglomerate in Northern and Central Illinois and provides healthcare services in the communities it serves. This case concerns whether Advocate properly maintains its pension plan under the Employee Retirement Income Security Act ("ERISA"). As demonstrated herein, Advocate fails to do so, to the detriment of it's over 33,000 employees who deserve better.

2. As its name implies, ERISA was crafted to protect employee retirement funds. A comprehensive history of ERISA put it this way:

> Employees should not participate in a pension plan for many years only to lose their pension . . . because their plan did not have the funds to meet its obligations. The major reforms in ERISA—fiduciary standards of conduct, minimum vesting and funding standards, and a government-run insurance program—aimed to ensure that long-service employees actually received the benefits their retirement plan promised.

James Wooten, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, at 3 (U. Cal. 2004).

3. This class action is brought on behalf of all participants and beneficiaries of the Advocate Health

Care Network Pension Plan, a defined benefit pension plan that is established, maintained, administered, and sponsored by Advocate, or by Advocate's committees (referred to as the "Advocate Plan" or simply the "Plan").

4. Advocate is violating numerous provisions of ERISA—including, on information and belief, underfunding the Advocate Plan—while erroneously claiming that the Plan is exempt from ERISA's protections because it is a "Church Plan." But the Advocate Plan does not meet the definition of a Church Plan under ERISA because Advocate plainly is not a church or a convention or association of churches and because the Advocate Plan was not established by a church or a convention or association of churches. That should be the end of the inquiry under ERISA, resulting in a clear finding that the Advocate Plan is not a Church Plan.

5. Advocate may claim that it is permitted to establish its own Church Plan under ERISA, even though it is not a church, because it is an organization "controlled by" or "associated with" a church, within the meaning of ERISA. Even if ERISA permitted such non-church entities to establish Church Plans, which it does not, Advocate is not controlled by a church, as the evidence will show. Moreover, Advocate is not associated with a church within the meaning of ERISA because it does not, as ERISA requires, "share common religious bonds and convictions" with a church.

6. Advocate is a non-profit healthcare conglomerate, not unlike other non-profit healthcare conglomerates with which Advocate competes in its commercial healthcare activities. Advocate is not owned or operated by a church and does not receive funding from a church. No denominational requirement exists for

Advocate employees. Indeed, Advocate tells prospective employees that any choice of faith, or lack thereof, is not a factor in the recruiting and hiring of Advocate employees. In choosing to recruit and hire from the population at large, Advocate must also be willing to accept neutral, generally applicable regulations, such as ERISA, imposed to protect those employees' legitimate interests. Moreover, Advocate owns and/or operates numerous healthcare facilities, including many that claim to be secular and have no relationship with any church.

7. If Advocate, a non-church organization, could itself establish a Church Plan, which Plaintiffs dispute, the Court would be required to evaluate many levels of evidence to determine whether Advocate shares common "religious bonds and convictions" with a church.

8. Moreover, if the Court weighed all this evidence and determined that Advocate did share such common religious bonds and convictions with a church, the Church Plan exemption would then be, as applied to Advocate, an unconstitutional accommodation under the Establishment Clause of the First Amendment. Advocate claims, in effect, that the participants in its defined benefit pension plan must be exempted from ERISA protections, and Advocate must be relieved of its ERISA financial obligations, because Advocate claims certain religious beliefs. The Establishment Clause, however, does not allow such an economic preference for Advocate and burden-shifting to Advocate employees. Extension of the Church Plan exemption to Advocate would be unconstitutional under Supreme Court law because it: (A) is not necessary to further the stated purposes of the exemption; (B) harms Advocate workers; (C) puts

Advocate competitors at an economic disadvantage; (D) relieves Advocate of no genuine religious burden created by ERISA; and (E) creates more government entanglement with alleged religious beliefs than compliance with ERISA creates.

9. Advocate's claim of Church Plan status for its defined benefit pension plan fails under both ERISA and the First Amendment. Plaintiffs seek an Order requiring Advocate to comply with ERISA and afford the Class all the protections of ERISA with respect to Advocate's defined benefit pension plan, as well as an Order finding that the Church Plan exemption, as claimed by Advocate, is unconstitutional because it violates the Establishment Clause of the First Amendment.

II. JURISDICTION AND VENUE

10. Subject Matter Jurisdiction. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States and pursuant to 29 U.S.C. § 1132(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA.

11. Personal Jurisdiction. This Court has personal jurisdiction over all Defendants because ERISA provides for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). All of the Defendants are either residents of the United States or subject to service in the United States, and the Court therefore has personal jurisdiction over them. The Court also has personal jurisdiction over them pursuant to Fed. R. Civ. P. 4(k)(1)(A) because they would all be subject to a court of general jurisdiction in Illinois as a result of

Defendant Advocate being headquartered in, transacting business in, and/or having significant contacts with this District.

12. Venue. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because (a) the Plan is administered in this District, (b) some or all of the violations of ERISA took place in this District, and/or (c) Defendant Advocate may be found in this District.

13. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendant Advocate systematically and continuously does business in this District, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.

III. PARTIES

A. Plaintiffs

14. Plaintiff Maria Stapleton. Plaintiff Stapleton was an employee of Advocate from April 2008 until February 2013. Because the Advocate Plan is a cash balance plan, participants in the plan must become fully vested after 3 years of service. See ERISA § 203(f)(2), 29 U.S.C. § 1053(f)(2). Accordingly, Plaintiff Stapleton is a vested participant in a pension plan maintained by Advocate and she is therefore eligible for pension benefits under the Plan to be paid at normal retirement age. Additionally and alternatively, Plaintiff Stapleton has a colorable claim to benefits under a pension plan maintained by Advocate and is a participant within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and is therefore entitled to maintain an action with respect to the Advocate Plan pursuant to ERISA §§ 502(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3), 29 U.S.C.

§§ 1132(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3).

15. Plaintiff Judith Lukas. Plaintiff Lukas has been an employee of Advocate since June 2008. Additionally and alternatively, Plaintiff Lukas has a colorable claim to benefits under a pension plan maintained by Advocate and is a participant within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and is therefore entitled to maintain an action with respect to the Advocate Plan pursuant to ERISA §§ 502(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3), 29 U.S.C. §§ 1132(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3).

16. Plaintiff Sharon Roberts. Plaintiff Roberts was an employee of Advocate from September 2009 until March 2013. Because the Advocate Plan is a cash balance plan, participants in the plan must become fully vested after 3 years of service. See ERISA § 203(f)(2). 29 U.S.C. § 1053(f)(2). Accordingly, Plaintiff Roberts is a vested participant in a pension plan maintained by Advocate and she is therefore eligible for pension benefits under the Plan to be paid at normal retirement age. Additionally and alternatively, Plaintiff Roberts has a colorable claim to benefits under a pension plan maintained by Advocate and is a participant within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and is therefore entitled to maintain an action with respect to the Advocate Plan pursuant to ERISA §§ 502(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3), 29 U.S.C. §§ 1132(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3).

17. Plaintiff Antoine Fox. Plaintiff Fox was an employee of Advocate from October 2008 until October 2012. Because the Advocate Plan is a cash balance plan, participants in the plan must become fully vested after 3 years of service. See ERISA § 203(f)(2),

29 U.S.C. § 1053(f)(2). Accordingly, Plaintiff Fox is a vested participant in a pension plan maintained by Advocate and she is therefore eligible for pension benefits under the Plan to be paid at normal retirement age. Additionally and alternatively, Plaintiff Fox has a colorable claim to benefits under a pension plan maintained by Advocate and is a participant within the meaning of ERISA section 3(7), 29 U.S.C. § 1002(7), and is therefore entitled to maintain an action with respect to the Advocate Plan pursuant to ERISA §§ 502(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3), 29 U.S.C. §§ 1132(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3).

B. Defendants

18. As discussed below, all the Defendants are ERISA fiduciaries.

19. Defendant Advocate Health Care Network and Subsidiaries ("Advocate"). Defendant Advocate is a 501(c)(3) non-profit corporation organized under, and governed by, Illinois law. Advocate is headquartered in Downers Grove, Illinois. Advocate is the largest health care provider in Illinois, with 12 hospitals and more than 250 sites offering inpatient and outpatient services, home health services, hospice, counseling, physician services, and health care education programs in Northern and Central Illinois. Advocate has annual operating revenues of approximately $4.6 billion and assets of approximately $7.8 billion. Advocate employs more than 33,300 people.

20. Defendant Advocate Health Care Network ("AHCN"). Defendant AHCN is a 501(c)(3) non-profit corporation organized under, and governed by, Illinois law. AHCN is the parent of Advocate and currently has no material operations or activities of its own,

apart from its ability to control the organizations comprising Advocate.

21. Defendant Kevin R. Brady. Defendant Brady has worked in leadership roles at Advocate for over 20 years and currently serves as Advocate's Senior Vice President, Chief Human Resources Officer.

22. Defendant Advocate Plan Administrative Committee and Defendants John and Jane Does, 1-20, Members of Defendant Advocate Plan Administrative Committee (the "Benefit Plan Administrative Committee for Church Plans"). Defendant Advocate Plan Administrative Committee is the Plan Administrator of the Advocate Plan. Defendants John and Jane Does 1-20 are individuals who, through discovery, are found to be members of the Advocate Plan Administrative Committee. These individuals will be added by name as Defendants in this action upon motion by Plaintiffs at an appropriate time.

23. Defendant Advocate Benefits Committee and Defendants John and Jane Does, 21-40, Members of Defendant Advocate Benefits Committee (the "Compensation and Benefits Committee of the Board of Directors of Advocate Health Care Network"). Defendants John and Jane Does 21-40 are individuals who, through discovery, are found to be members of Defendant Advocate Benefits Committee. These individuals will be added by name as Defendants in this action upon motion by Plaintiffs at an appropriate time.

24. Defendants John and Jane Does 41-60. Defendants John and Jane Does 41-60 are individuals who, through discovery, are found to have fiduciary responsibilities with respect to the Advocate Plan and are fiduciaries within the meaning of ERISA. These individuals will be added by name as Defendants in this

action upon motion by Plaintiffs at an appropriate time.

25. Defendants Kevin R. Brady, members of the Advocate Plan Administrative Committee, members of the Advocate Benefits Committee and John and Jane Does 41-60 are collectively referred to herein as the "Individual Defendants."

IV. THE BACKGROUND OF THE CHURCH PLAN EXEMPTION

A. The Adoption of ERISA

26. Following years of study and debate, and broad bipartisan support, Congress adopted ERISA in 1974, and the statute was signed into law by President Ford on Labor Day of that year. Among the factors that led to the enactment of ERISA were the widely publicized failures of certain defined benefit pension plans, especially the plan for employees of Studebaker Corporation, an automobile manufacturing company, which defaulted on its pension obligations in 1965. *See generally* John Langbein, *et al.*, PENSION AND EMPLOYEE BENEFIT LAW 78-83 (2010) ("The Studebaker Incident").

27. As originally adopted in 1974, and today, ERISA protects the retirement savings of pension plan participants in a variety of ways. As to participants in traditional defined benefit pension plans, such as the Plan at issue here, ERISA mandates, among other things, that such plans be currently funded and actuarially sound, that participants' accruing benefits vest pursuant to certain defined schedules, that the administrators of the plan report certain information to participants and to government regulators, that the fiduciary duties of prudence, diversification, loyalty, and so on apply to those who manage the plans, and

that the benefits promised by the plans be guaranteed, up to certain limits, by the Pension Benefit Guaranty Corporation. *See, e.g.*, ERISA §§ 303, 203, 101-106, 404-406, 409, 4007, 4022, 29 U.S.C. §§ 1083, 1053, 1021-1026, 1104-1106, 1109, 1307, 1322.

28. ERISA centers on pension plans, particularly defined benefit pension plans, as is reflected in the very title of the Act, which addresses "retirement income security." However, ERISA also subjects to federal regulation defined contribution pension plans (such as 401(k) plans) and welfare plans, which provide health care, disability, severance and related non-retirement benefits. ERISA §§ 3(34) and (1), 29 U.S.C. §§ 1002(34) and (1).

B. The Scope of the Church Plan Exemption in 1974

29. As adopted in 1974, ERISA provided an exemption from compliance for certain plans, in particular governmental plans and Church Plans. Plans that met the statutory definitions were exempt from all of ERISA's substantive protections for participants. ERISA § 4(b)(2), 29 U.S.C. § 1003(b)(2) (exemption from Title I of ERISA); ERISA § 4021(b)(3), 29 U.S.C. § 1321(b)(3) (exemption from Title IV of ERISA).

30. ERISA defined a Church Plan as a plan "established and maintained for its employees by a church or by a convention or associations of churches."[1]

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[1] ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A). ERISA is codified in both the labor and tax provisions of the United States Code, titles 29 and 26 respectively. Many ERISA provisions appear in both titles. For example, the essentially identical definition of Church Plan in the Internal Revenue Code is found at 26 U.S.C. § 414(e).

31. Under the 1974 legislation, although a Church Plan was required to be established and maintained by a church, it could also include employees of certain pre-existing agencies of such church, but only until 1982. ERISA § 3(33)(C) (1974), 29 U.S.C. § 1002(33)(C) (1974) (current version as amended at 29 U.S.C. § 1002(33) (West 2013)). Thus, under the 1974 legislation, a pension plan that was not established and maintained by a church could not be a Church Plan. *Id.*

C. The Changes to the Church Plan Exemption in 1980

32. Church groups had two major concerns about the definition of "Church Plans" in ERISA as adopted in 1974. The first, and far more important, concern was that Church Plans after 1982 could not include the lay employees of agencies of a church. The second concern that arose in the church community after 1974 was more technical. Under the 1974 statute, all Church Plans, single-employer or multiemployer, had to be "established and maintained" by a church or a convention/association of churches. This ignored the role of the churches' financial services organizations in the day-to-day management of the pension plans. In other words, although Church Plans were "established" by a church, in practice they were often "maintained" and/or "administered" by a separate financial services organization of the church, usually incorporated and typically called a church "pension board."

33. These two concerns ultimately were addressed when ERISA was amended in 1980 in various respects, including a change in the definition of "Church Plan." Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), P.L. No. 96-364. The amended definition is current law.

34. As to the first concern (regarding lay employees of agencies of a church), Congress included a new definition of "employee" in subsection (C)(ii)(II) of section 3(33) ofERISA. 29 U.S.C. § 1002(33)(C)(ii)(II) (1980) (current version at 29 U.S.C. § 1002(33)(C)(ii)(II) (West 2013)). As amended, an "employee" of a church or a convention/association of churches includes an employee of an organization "which is controlled by or associated with a church or a convention or association of churches." *Id.* The phrase "associated with" is then defined in ERISA § 3(33)(C)(iv) to include only those organizations that "share[] common religious bonds and convictions with that church or convention or association of churches." 29 U.S.C. § 1002(33)(C)(iv) (1980) (current version at 29 U.S.C. § 1002(33)(C)(iv) (West 2013)). Although this new definition of "employee" permitted a "Church Plan" to include among its participants employees of organizations controlled by or associated with the church, convention, or association of churches, it remains the case that a plan covering such "employees" cannot qualify as a "Church Plan" unless it was "established by" the church, convention, or association of churches. ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A) (West 2013).

35. As to the second concern (regarding plans "maintained by" a separate church pension board), the 1980 amendments spoke to the issue as follows:

> A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, *the principal purpose or function of which is the administration or funding of a plan or program for the provision of*

> *retirement benefits or welfare benefits*, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

ERISA § 3(33)(C)(i) (1980), 29 U.S.C. § 1002(33)(C)(i) (1980) (emphasis added) (current version at 29 U.S.C. § 1002(33)(C)(i) (West 2013)). Accordingly, under this provision, a plan "established" by a church or by a convention or association of churches could retain its "Church Plan" status even if the plan was "maintained by" a distinct organization, so long as (1) "the principal purpose or function of [the organization] is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits" and (2) the organization is "controlled by or associated with" the church or convention or association of churches. *Id.*

36. This church "pension board" clarification has no bearing on plans that were not "established" by a church or by a convention or association of churches. Thus, a plan "established" by an organization "controlled by or associated with" a church would not be a "Church Plan" because it was not "established" by a church or by a convention or association of churches.

37. Further, this "pension board" clarification has no bearing on plans that were not "maintained" by a church pension board. Thus, even if a plan were "established" by a church, and even if it were "maintained by" an organization "controlled by or associated with" a church, such as a school, hospital, or publishing company, it still would not be a "Church Plan" if the principal purpose of the organization was other than the administration or funding of the plan. In such

plans, the plan is "maintained" by the school, hospital or publishing company, and usually through the human resources department of such entity. It is not maintained by a church pension board: No "organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits" maintains the plan. *Compare with* ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i) (1980) (current version at 29 U.S.C. § 1002(33)(C)(i) (West 2013)).

38. The requirements for Church Plan status under ERISA, both as originally adopted in 1974 and as amended in 1980, are, as explained above, very clear. And there is no tension between the legislative history of the 1980 amendment and the amendment itself: the Congress enacted exactly what it wanted to enact. Fundamental to the scheme, both as originally adopted and as fine-tuned in 1980, was that neither an "affiliate" of a church (using the 1974 language) nor "an organization controlled by or associated with" a church (using the 1980 language) could itself establish a Church Plan. Its employees could be *included* in a Church Plan, but if it sponsored its own plan, that was not a Church Plan. With respect to "pension boards," the 1980 legislation simply clarified the long standing practice that churches could use their own financial organizations to manage their Church Plans.

39. Unfortunately, in 1983, in response to a request for a private ruling, the Internal Revenue Service ("IRS") issued a short General Counsel Memorandum that misunderstood the statutory framework. The author incorrectly relied on the "pension board" clarification to conclude that a non-church entity could sponsor its own Church Plan as long as the plan was

managed by some "organization" that was controlled by or associated with a Church. This, of course, is not what the statute says, nor what Congress intended. In any event, this mistake was then repeated, often in verbatim language, in subsequent IRS determinations and, after 1990, in Department of Labor determinations. Under the relevant law, these private rulings may only be relied upon by the parties thereto, within the narrow confines of the specific facts then disclosed to the agencies, and are not binding on this Court in any event. Moreover, the IRS and DOL interpretations of the statutory framework, as expressed in these private rulings, are not entitled to judicial deference because the rulings are conclusory, inconsistent, and lack meaningful analysis.

V. ADVOCATE

A. Advocate's Operations

40. Advocate was formed in 1995. It is a 501(c)(3) non-profit corporation organized under, and governed by, Illinois law. Advocate is headquartered in Downers Grove, Illinois. Advocate is the largest health system in Illinois and owns and operates 12 acute-care hospitals, primary and specialty physician services, outpatient centers, physician office buildings, home health, and hospice care throughout the metropolitan Chicago area and central Illinois.

41. As of its 2012 fiscal year end, Advocate had approximately $7.8 billion in assets and annual operating revenues of approximately $4.6 billion.

42. Advocate employs more than 33,300 people.

43. In addition to its statewide hospital network, Advocate has branched out to include numerous subsidiaries and/or related entities, including for-

profit corporations such as Evangelical Services Corporation, which provides ancillary and support services to Advocate, High Technology, Inc., which owns and operates diagnostic centers, and several large physician groups, including Advocate Health Centers, Inc., BroMenn Medical Group, and Dreyer Medical Group, Ltd.

44. Advocate has interests in, or signature or other authority over, financial accounts in such foreign tax-havens as the Cayman Islands. It directly or indirectly owns at least two captive insurance companies in the Cayman Islands: Advocate Insurance SPC and Sherman Health Insurance Company.

45. Like other large non-profit hospital systems, Advocate relies upon revenue bonds to raise money, and it has significant sums invested in, among other things, fixed-income securities, equity securities, and hedge funds.

46. The principle purpose or function of Advocate is not the administration or funding of a plan or program for the provision of retirement or welfare benefits, or both, for the employees of a church or a convention or association of churches.

47. The management of Advocate is comprised primarily of lay people, and Executive Officers of Advocate receive compensation in line with executive officers of other hospital systems. For example, in 2011, the Advocate President and Chief Executive Officer received reportable compensation of $3,316,797.

48. Advocate is not a church or a convention or association of churches. On information and belief, Advocate claims some affiliation with the United Church of Christ ("UCC") and the Evangelical Lutheran Church in America ("ELCA").

49. However, Advocate is not owned by the UCC, the ELCA, or any other church.

50. Advocate does not receive funding from the UCC, the ELCA, or any other church.

51. Advocate does not claim that the UCC, the ELCA, or any other church has any liability for Advocate's debts or obligations.

52. Neither the UCC, the ELCA, nor any other church has any role in the governance of Advocate.

53. Neither the UCC, the ELCA, nor any other church has any role in the maintenance and/or administration of the Advocate Plan.

54. Advocate specifically chooses not to impose any denominational requirement on its employees.

55. Advocate has no denominational requirement for its patients and/or clients.

56. Advocate purports to disclose, and not keep confidential, its own highly complex financial records. For example, Advocate is required and, in some cases, has voluntarily elected to comply with a broad array of elaborate state and federal regulations and reporting requirements, including Medicare and Medicaid. In addition, Advocate makes public its consolidated financial statements, which describe Advocate's representations as to its own highly complex operations and financial affairs. Finally, Advocate's financial information is regularly disclosed to the rating agencies and the public when tax-exempt revenue bonds are issued.

B. The Advocate Plan

57. Advocate maintains the Advocate Plan and has the power to continue, amend, or terminate the plan.

58. The Advocate Plan is a non-contributory defined benefit pension plan covering substantially all of Advocate's employees.

59. The Advocate Plan is a cash balance plan, whereby the accrued benefits are reflected as a hypothetical account balance.

60. Upon information and belief, the Advocate Plan is currently underfunded.

1. The Advocate Plan Meets the Definition of an ERISA Defined Benefit Plan

61. The Advocate Plan is a plan, fund, or program that was established or maintained by Advocate and which, by its express terms and surrounding circumstances, provides retirement income to employees and/or results in the deferral of income by employees to the termination of their employment or beyond. As such, the Advocate Plan meets the definition of an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

62. The Advocate Plan does not provide for an individual account for each participant and does not provide benefits based solely upon the amount contributed to a participant's account. As such, the Advocate Plan is a defined benefit plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35), and is not an individual account plan or "defined contribution plan" within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34).

63. The Advocate Plan is a cash balance plan because it computes accrued benefits by reference to hypothetical accounts balance or equivalent amounts and is therefore required to comply with the special rules for cash balance plans, including but not limited

to ERISA § 203(f)(2), 29 U.S.C. § 1053(f)(2),which requires that any employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions. In other words, the maximum vesting period allowable for a cash balance plan is 3 years.

64. Currently the Plan is being operated in violation of ERISA §§ 203(a)(2) and 203(f)(2) because it requires participants in the plan to complete 5 years of service to be vested.

65. Indeed, communications provided to participants by the Plan Administrator state "You become fully vested in the value of your Pension Plan account once you complete five years of participation in the plan in which you work at least 1,000 hours per year."

2. The Defendants Meet the Definition of ERISA Fiduciaries

a. Nature of Fiduciary Status

66. Named Fiduciaries. Every ERISA plan must have one or more "named fiduciaries." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The person named as the "administrator" in the plan instrument is automatically a named fiduciary and, in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

67. De Facto Fiduciaries. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises

any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

68. Each of the Defendants was a fiduciary with respect to the Plan and owed fiduciary duties to the Plan and its participants and beneficiaries under ERISA in the manner and to the extent set forth in the Plan's documents and/or through their conduct.

69. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to manage and administer the Plan and the Plan's investments solely in the interest of the Plan's participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

70. Plaintiffs do not allege that each Defendant was a fiduciary with respect to all aspects of the Plan's management and administration. Rather, as set forth below, Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority assigned to or exercised by each of them, and, as further set forth below, the claims against each Defendant are based on such specific discretion and authority.

71. ERISA permits fiduciary functions to be delegated to insiders without an automatic violation of the rules against prohibited transactions, ERISA

§ 408(c)(3), 29 U.S.C. § 1108(c)(3), but insider fiduciaries, like external fiduciaries, must act solely in the interest of participants and beneficiaries, not in the interest of the Plan sponsor.

b. Defendants Are Each ERISA Fiduciaries

72. Defendant Advocate. Advocate is the employer responsible for maintaining the Advocate Plan and is, therefore, the plan sponsor of the Advocate Plan within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B). The Advocate Plan Summary Plan Description ("SPD") also states that Advocate is the Plan Sponsor. Upon information and belief, Defendant Advocate's responsibilities include fiduciary oversight of the Advocate Plan. Upon information and belief, Defendant Advocate had the responsibility to appoint, and hence to monitor and remove, the members of the Advocate Plan Administration Committee.

73. Defendant Advocate is a fiduciary with respect to the Advocate Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercises discretionary authority or discretionary control respecting management of the Advocate Plan, exercises authority and control respecting management or disposition of the Advocate Plan's assets, and/or has discretionary authority or discretionary responsibility in the administration of the Advocate Plan.

74. Defendant AHCN. Upon information and belief, Defendant AHCN's responsibilities include fiduciary oversight of the Advocate Plan, including managing and exerting discretionary authority or control over the assets of the Advocate Plan. Defendant AHCN is a fiduciary with respect to the Advocate Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A),

because, as the parent corporation of Advocate, it exercises discretionary authority or discretionary control respecting management of the Advocate Plan, exercises authority and control respecting management or disposition of the Advocate Plan's assets, and/or has discretionary authority or discretionary responsibility in the administration of the Advocate Plan.

75. Defendant Brady. Upon information and belief, Defendant Brady's responsibilities include fiduciary oversight of the Advocate Plan. According to the Advocate Plan SPD, participant inquiries regarding the administration of the Advocate Plan must be sent to the Plan Administrator, in care of the Senior Vice President, Human Resources. As the Senior Vice President, Chief Human Resources Officer at Advocate, Defendant Brady acts on behalf of and/or in conjunction with the Plan Administrator with respect to questions of Plan administration. Defendant Brady is a fiduciary with respect to the Advocate Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercises discretionary authority or discretionary control respecting management of the Advocate Plan, exercises authority and control respecting management or disposition of the Advocate Plan's assets, and/or has discretionary authority or discretionary responsibility in the administration of the Advocate Plan.

76. Advocate Plan Administrative Committee Defendants. The terms of the instrument, or instruments, under which the Advocate Plan is operated specifically designate Defendant Advocate Benefit Plan Administrative Committee for Church Plans as a Plan Administrator sufficient to meet the requirements of ERISA § 402, 29 U.S.C. § 1102.

77. Defendant Advocate Plan Administrative Committee and Defendants John and Jane Does 1-20, as members of the Advocate Plan Administrative Committee, are also fiduciaries with respect to the Advocate Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because they exercise discretionary authority or discretionary control respecting management of the Advocate Plan, exercise authority and control respecting management or disposition of the Advocate Plan's assets, and/or have discretionary authority or discretionary responsibility in the administration of the Advocate Plan.

78. Advocate Benefits Committee Defendants. Defendant Advocate Benefits Committee and the members of Defendant Advocate Benefits Committee are, on information and belief, authorized to act with respect to compensation and benefits matters. Upon information and belief, the responsibilities of Defendant Advocate Benefits Committee and the members of Defendant Advocate Benefits Committee include fiduciary oversight of the Advocate Plan.

79. Defendant Advocate Benefits Committee and Defendants John and Jane Does 21-40, as members of Defendant Advocate Benefits Committee, are fiduciaries with respect to the Advocate Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because they exercise discretionary authority or discretionary control respecting management of the Advocate Plan, exercise authority and control respecting management or disposition of the Advocate Plan's assets, and/or have discretionary authority or discretionary responsibility in the administration of the Advocate Plan.

80. Plaintiffs reserve the right to amend this Complaint to name other or additional Defendants once

she has had the opportunity to conduct discovery on these issues.

81. Although Advocate maintains that the Advocate Plan is exempt from ERISA coverage as a Church Plan, it claims ERISA status for its 401(k) plan and welfare benefit plans.

82. Compliance with ERISA creates no undue, genuine burden on any religious practice of Advocate, as evidence by Advocate's claimed compliance with ERISA for its 401(k) plan and welfare benefit plans.

3. The Advocate Plan Is Not a Church Plan

83. Advocate claims that the Advocate Plan is a Church Plan under ERISA § 3(33), 29 U.S.C. § 1002(33), and the analogous section of the Internal Revenue Code ("IRC"), and is therefore exempt from ERISA's coverage under ERISA § 4(b)(2), 29 U.S.C. § 1003(b)(2).

a. Only Two Types of Plans May Qualify as Church Plans and the Advocate Plan is Neither

84. Under § 3(33) of ERISA, 29 U.S.C. § 1002(33), only the following two types of plans may qualify as Church Plans:

- First, under section 3(33)(A) of ERISA, 29 U.S.C. § 1002(33)(A), a plan *established and maintained* by a church or by a convention or association of churches, can qualify under certain circumstances and subject to the restrictions of section 3(33)(B) of ERISA, 29 U.S.C. § 1002(33)(B); and
- Second, under section 3(33)(C)(i) of ERISA, 29 U.S.C. § 1002(33)(C)(i), a plan *established* by a church or by a convention

> or association of churches that is *maintained* by an organization, *the principal purpose or function of which* is the administration or funding of a retirement plan, if such organization is controlled by or associated with a church or convention or association of churches, can qualify under certain circumstances and subject to the restrictions of section 3(33)(B) of ERISA, 29 U.S.C. § 1002(33)(B).

Both types of plans must be "established" by a church or by a convention or association of churches in order to qualify as "Church Plans."

85. Although other portions of ERISA § 3(33)(C) address, among other matters, who can be *participants* in Church Plans—in other words, which employees can be in Church Plans, etc.—these other portions of ERISA § 3(33)(C) do not add any other type of *plan* that can be a Church Plan. 29 U.S.C. § 1002(33)(C). The only two types of plans that can qualify as Church Plans are those described in ERISA § 3(33)(A) and in § 3(33)(C)(i). 29 U.S.C. §§ 3(33)(A) and (C)(i). The Advocate Plan does not qualify as a Church Plan under either ERISA § 3(33)(A) or § 3(33)(C)(i). 29 U.S.C. §§ 3(33)(A) or (C)(i).

86. First, under ERISA § 3(33)(A), "[t]he term "church plan" means a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26." ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A). A straightforward reading of this section is that a church plan "means," and therefore by definition, *must be* "a plan established . . . by a church or convention or association of churches."

87. The Advocate Plan at issue here is not a Church Plan as defined in ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A), because the Advocate Plan was established, maintained, administered or sponsored by Advocate for its own, or its affiliates' own, employees. Because neither Advocate nor its affiliates are a church or a convention or association of churches, nor do they claim to be, the Advocate Plan was not "established and maintained by" a church or by a convention or association of churches and were not maintained for employees of any church or convention or association of churches. That is the end of the inquiry under ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A).

88. Second, under ERISA § 3(33)(C)(i), a Church Plan also includes a plan "established" by a church or by a convention or association of churches that is "maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

89. The Advocate Plan is not a Church Plan as defined in ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), because the Advocate Plan was not "established" by a church or by a convention or association of churches. Moreover, the Advocate Plan does not qualify as a "Church Plan" under section 3(33)(C)(i) because it is not maintained by any entity whose principal purpose or function is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both. This ends any argument that

the Advocate Plan could be a Church Plan under ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

90. To the extent that Advocate claims the the Advocate Plan qualifies as a "Church Plan" under section 3(33)(C)(i) because it is "maintained" by an entity within Advocate, other that Advocate, whose principal purpose or function is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, the claim fails because the only entity with the power to "maintain" the Advocate Plan, which includes the power to continue and/or terminate the Plan, is Advocate. The claim also fails because if all that is required for a plan to qualify as a church plan is that it meet section C's requirement that it be maintained by a church-associated organization, there would be no purpose for section A, which defines a church plan as one established and maintained by a church. This ends any argument that the Advocate Plan could be a Church Plan under ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), because it is maintained by an entity other than Advocate.

91. However, even if the Advocate Plan had been "established" by a church and even if the principal purpose or function of Advocate was the administration or funding of the Advocate Plan (instead of running a hospital conglomerate), the Advocate Plan still would not qualify as a Church Plan under ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), because the principal purpose of the Plan is not to provide retirement or welfare benefits to *employees of a church or convention or association of churches*. For example, the approximately 33,000 participants in the Advocate Plan work for Advocate, a non-profit hospital conglomerate. Advocate is not a church or convention or

association of churches and its employees are not employees of a church or convention or association of churches within the meaning of ERISA.

92. Under ERISA § 3(33)(C)(ii), 29 U.S.C. § 1002(33)(C)(ii), however, an employee of a tax exempt organization that is controlled by or associated with a church or a convention or association of churches also may be considered an employee of a church. This part of the definition merely explains which employees a church plan may cover *once a valid church plan is established*. The Advocate Plan also fails this part of the definition, because Advocate is not controlled by or associated with a church or convention or association of churches within the meaning of ERISA.

93. Advocate is not controlled by a church or convention or association of churches.

94. Advocate is not owned or operated by a church and does not receive funding from a church.[2]

95. In addition, Advocate is not "associated with" a church or convention or association of churches within the meaning of ERISA. Under ERISA § 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), an organization "is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches." Advocate does not share common religious bonds and convictions with a church or association of churches.

96. For example, Advocate tells prospective employees that religious affiliation is not a factor in the

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[2] Notably, if Advocate were "controlled by" the UCC or the ELCA, then those churches would be exposed to significant potential liability stemming from medical malpractice and other legal claims related to the provision of medical care by Advocate.

recruiting and hiring of Advocate employees. In choosing to recruit and hire from the population at large, Advocate must also be willing to accept generally applicable, neutral regulations, such as ERISA, which protect those employees' legitimate interests.

97. In addition, Advocate has a practice of partnering with hospitals that claim no religious affiliation. In choosing to compete in the commercial arena of healthcare services and to embark upon a business plan that targets healthcare facilities with no claimed ties to any particular religion, or to religion generally, Advocate must be willing to accept neutral regulations, such as ERISA, imposed to protect its employees' legitimate interests.

98. Advocate owns at least one offshore insurance company and invests in high risk venture capital projects as part of its business plan.

99. Advocate provides non-denominational chapels and encourages its clients to seek the faith of their own choosing, including Judaism and Catholicism. So while Advocate may purport to share common religious bonds and convictions with the UCC and the ELCA, it in fact only selectively chooses to share a bare few such bonds and convictions, and ignores or abandons these convictions when it is in its economic interest to do so.

100. The Advocate Plan further fails to satisfy the requirements of ERISA § 3(33)(C)(i) because this section requires the organization that maintains the plans to be "controlled by or associated with" a church or convention or association of churches within the meaning of ERISA. 29 U.S.C. § 1002(33)(C)(i). Thus, even if (1) a church had "established" the Advocate

Plan (which it did not), (2) the principal purpose or function of Advocate was the administration or funding of the Advocate Plan (instead of running a hospital conglomerate), and (3) Advocate's employees were employees of a church or convention or association of churches (which they are not), the Advocate Plan still would not qualify as a Church Plan under ERISA § 3(33)(C)(i) because—for the reasons outlined above—Advocate is not *controlled by or associated with* a church or convention or association of churches within the meaning of ERISA. 29 U.S.C. § 1002(33)(C)(i).

101. Finally, even if Advocate were "controlled by or associated with" a church, and thus its employees were deemed "employees" of a church under ERISA § 3(33)(C)(ii)(2), and even if the Advocate Plan was "maintained by" either a church or "pension board" satisfying the requirements of ERISA § 3(33)(C)(i), the Advocate Plan still would not be a "Church Plan" because all "Church Plans" must be "established" by a church or by a convention or association of churches. 29 U.S.C. §§ 1002(33)(A), (C)(i). Although a church may be deemed an "employer" of the employees of an organization that it "controls" or with which it is "associated," *see* ERISA § 3(33)(C)(iii), 29 U.S.C. § 1002(33)(C)(iii), nothing in ERISA provides that the church may be deemed to have "established" a retirement plan that was in fact established by the "controlled" or "associated" organization. Accordingly, because no church established the Advocate Plan, the Plan cannot be a "Church Plan" within the meaning of ERISA.

b. Even *if* the Advocate Plan Could Otherwise Qualify as a Church Plan under ERISA §§ 3(33)(A) or (C)(i), it is Excluded From Church Plan Status under ERISA § 3(33)(B)(ii)

102. Under ERISA § 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii), a plan is specifically excluded from Church Plan status if less than substantially all of the plan participants are members of the clergy or employed by an organization controlled by or associated with a church or convention or association of churches. In this case, there are approximately 33,000 participants in the Advocate Plan, and very nearly all of them are non-clergy healthcare workers.

103. If the approximately 33,000 participants in the Advocate Plan do not work for an organization that is controlled by or associated with a church or convention or association of churches, then even if the Advocate Plan could otherwise qualify as a Church Plan under ERISA §§ 3(33)(A) or (C)(i), it still would be foreclosed from Church Plan status under section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii).

104. As set forth above, Advocate is not controlled by a church or convention or association of churches, nor does it share common religious bonds and convictions with a church or convention or association of churches.

c. Even if the Advocate Plan Could Otherwise Qualify as a Church Plan under ERISA, the Church Plan Exemption, as Claimed By Advocate, Violates the Establishment Clause of the First Amendment of the Constitution, and is Therefore Void and Ineffective

105. The Church Plan exemption is an accommodation for *churches* that establish and maintain pension plans, and it allows such plans to be exempt from ERISA.

106. The Establishment Clause guards against the establishment of religion by the government. The government "establishes religion" when, among other activities, it privileges those with religious beliefs (e.g. exempts them from neutral regulations) at the expense of nonadherents and/or while imposing legal and other burdens on nonmembers. Extension of the Church Plan exemption to Advocate, a non-church entity, privileges Advocate for its claimed faith at the expense of its employees, who are told that their faith is not relevant to their employment, yet who are then denied the benefit of insured, funded pensions, as well as many other important ERISA protections. Similarly, Advocate, a non-church entity, has a privileged economic advantage over its competitors in the commercial arena it has chosen, based solely on Advocate's claimed religious beliefs. This too is prohibited by the Establishment Clause. Simply put, when government provides a regulatory exemption "exclusively to religious organizations that is not required by the Free Exercise Clause and that ... burdens nonbeneficiaries," it has endorsed religion in violation of the Establishment Clause. *See, e.g., Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1, 15, 18 n. 8 (1989) (plurality opinion).

107. As set forth in more detail below in Count IX, the extension of the Church Plan accommodation to Advocate, which is not a church, violates the Establishment Clause because it is not necessary to further the stated purposes of the exemption, harms Advocate workers, puts Advocate competitors at an economic

disadvantage, relieves Advocate of no genuine religious burden created by ERISA, and creates more government entanglement with alleged religious beliefs than compliance with ERISA creates. Accordingly, the Church Plan exemption, as claimed by Advocate, is void and ineffective.

VI. CLASS ALLEGATIONS

108. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and the following class of persons similarly situated: All participants or beneficiaries of the Advocate Health Care Network Pension Plan.

109. Excluded from the Class are any high-level executives at Advocate or any employees who have responsibility or involvement in the administration of the Plan, or who are subsequently determined to be fiduciaries of the Advocate Plan, including the Individual Defendants.

A. Numerosity

110. The exact number of Class members is unknown to Plaintiffs at this time, but may be readily determined from records maintained by Advocate. Advocate currently employs approximately 33,000 individuals. Upon information and belief, many, if not all, of those persons are likely members of the Class, and thus the Class is so numerous that joinder of all members is impracticable.

B. Commonality

111. The issues regarding liability in this case present common questions of law and fact, with answers that are common to all members of the Class, including (1) whether the Plan is exempt from ERISA as a

Church Plan, and, if not, (2) whether the fiduciaries of the Plan have failed to administer and failed to enforce the funding obligations of the Plan in accordance with ERISA.

112. The issues regarding the relief are also common to the members of the Class as the relief will consist of (1) a declaration that the Plan is an ERISA covered plan; (2) an order requiring that the Plan comply with the administration and enforce the funding obligations of the Plan in accordance with ERISA; and (3) an order requiring Advocate to pay civil penalties to the Class, in the same statutory daily amount for each member of the Class.

C. Typicality

113. 113. Plaintiffs' claims are typical of the claims of the other members of the Class because her claims arise from the same event, practice and/or course of conduct, namely Defendants' failure to maintain the Plan in accordance with ERISA. Plaintiffs' claims are also typical because all Class members are similarly affected by Defendants' wrongful conduct.

114. Plaintiffs' claims are also typical of the claims of the other members of the Class because, to the extent Plaintiffs seek equitable relief, it will affect all Class members equally. Specifically, the equitable relief sought consists primarily of (i) a declaration that the Advocate Plan is not a Church Plan; and (ii) a declaration that the Advocate Plan is an ERISA covered plan that must comply with the administration and funding requirements of ERISA. In addition, to the extent Plaintiffs seek monetary relief, it is for civil fines to the Class in the same statutory daily amount for each member of the Class.

115. Advocate does not have any defenses unique to Plaintiffs' claims that would make Plaintiffs' claims atypical of the remainder of the Class.

D. Adequacy

116. Plaintiffs will fairly and adequately represent and protect the interests of all members of the Class.

117. Plaintiffs do not have any interests antagonistic to or in conflict with the interests of the Class.

118. Defendant Advocate and the Individual Defendants have no unique defenses against the Plaintiffs that would interfere with Plaintiffs' representation of the Class.

119. Plaintiffs have engaged counsel with extensive experience prosecuting class actions in general and ERISA class actions in particular.

E. Rule 23(b)(1) Requirements

120. 120. The requirements of Rule 23(b)(1)(A) are satisfied because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants.

121. The requirements of Rule 23(b)(1)(B) are satisfied because adjudications of these claims by individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede the ability of other members of the Class to protect their interests.

F. Rule 23(b)(2) Requirements

122. Class action status is also warranted under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the

Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

G. Rule 23(b)(3) Requirements

123. If the Class is not certified under Rule 23(b)(1) or (b)(2), then certification under (b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members. The common issues of law or fact that predominate over any questions affecting only individual members include: (1) whether the Plan is exempt from ERISA as a Church Plan, and, if not, (2) whether the fiduciaries of the Plan have failed to administer and fund the Plan in accordance with ERISA, and (3) whether the Church Plan exemption, as claimed by Advocate, violates the Establishment Clause of the First Amendment. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

A. Individual Class members do not have an interest in controlling the prosecution of these claims in individual actions rather than a class action because the equitable relief sought by any Class member will either inure to the benefit of the Plan or affect each class member equally;

B. Individual Class members also do not have an interest in controlling the prosecution of these claims because the monetary relief that they could seek in any individual action is identical to the relief that is being sought on their behalf herein;

C. There is no other litigation begun by any other Class members concerning the issues raised in this litigation;

D. This litigation is properly concentrated in this forum, which is where Defendant Advocate is headquartered; and

E. There are no difficulties managing this case as a class action.

VII. CAUSES OF ACTION

COUNT I

(Claim for Equitable Relief Pursuant to ERISA §§ 502(a)(2) and 502(a)(3) Against Defendants Advocate, AHCN, Defendant Advocate Plan Administrative Committee and John and Jane Does 1-20, the Advocate Plan Administrative Committee Member Defendants)

124. Plaintiffs repeat and re-allege the allegations contained in all foregoing paragraphs herein.

125. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to obtain "appropriate equitable relief . . . to enforce any provisions of this title." Pursuant to this provision, 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiffs seek declaratory relief that the Advocate Plan is not a Church Plan within the meaning of ERISA § 3(33), 29 U.S.C. § 1002(33), and thus is subject to the provisions of Title I and Title IV of ERISA.

126. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), also authorizes a participant or beneficiary to bring a civil action "(A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to

redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." Pursuant to these provisions, Plaintiffs seek orders directing the Advocate Plan's sponsor and administrator to bring the Advocate Plan into compliance with ERISA.

127. ERISA § 502(a)(2), 29 U.S.C. § 1132(2), authorizes a participant or beneficiary to bring a civil action for appropriate relief under 29 U.S.C. § 1109(a), against a fiduciary "who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries" and the fiduciary "shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate." Because the operation of the Plan as a non-ERISA plan was a breach of Defendants' fiduciary duties, the Defendants breached their fiduciary duties and Plaintiffs also seek plan-wide equitable and remedial relief under ERISA § 502(a)(2).

128. As the Advocate Plan is not a Church Plan within the meaning of ERISA § 3(33), 29 U.S.C. § 1002(33), and meets the definition of a pension plan under ERISA § 3(2), 29 U.S.C. § 1002(2), the Advocate Plan should be declared to be an ERISA-covered pension plan, and the Advocate Plan's sponsor and administrator should be ordered to bring the Advocate Plan into compliance with ERISA, including by remedying the violations set forth below.

COUNT II

(Claim for Violation of ERISA § 203 and for Equitable Relief Pursuant to ERISA § 502(a)(3) Against Defendant Advocate, and Pursuant to

ERISA § 502(a)(2) Against Defendants Advocate, AHCN, Advocate Plan Administrative Committee and John and Jane Does 1-20, the Advocate Plan Administrative Committee Member Defendants)

129. Plaintiffs repeat and re-allege the allegations contained in all foregoing paragraphs herein.

130. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) authorizes a participant or beneficiary to bring a civil action "(A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."

131. Currently the Advocate Plan requires participants to complete five years of vesting service to become fully vested in their accrued benefits in the Plan, which violates ERISA §§ 203(a)(2) and (f)(2), 29 U.S.C. §§ 1053(a)(2) and (f)(2), because the Advocate Plan, which is a cash balance plan, may not require a participant to complete more than 3 years of service to become fully vested in her benefits under the Plan.

132. Pursuant to 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek an order that they, along with all participants who have completed three years of service, are fully vested in their accrued benefits under the Advocate Plan.

133. Pursuant to 502(a)(3), 29 U.S.C. § 1132(a)(2), Plaintiffs seek an order requiring the Plan Administrator to furnish them with a benefit statement that is compliant with ERISA and that states their account balance based on a three year vesting period.

134. Pursuant to 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek an orders directing the Advocate Plan's

sponsor and administrator to amend the Advocate Plan, which is a cash balance plan that computes accrued benefits by reference to hypothetical accounts balance or equivalent amounts, to comply with all the special rules for cash balance plans.

135. In particular, Plaintiffs seek an order directing the Advocate Plan's sponsor and administrator to amend the vesting provision of the Advocate Plan to comply with ERISA § 203(f)(2), 29 U.S.C. §§ 1053 (f)(2), which requires that any employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

136. Pursuant to § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek an order requiring the Plan Sponsor to contribute additional funding to the Advocate Plan, as required by ERISA § 302, 29 U.S.C. §§ 1052, to cover the additional Plan liabilities resulting from the accrued benefits owed to all participants who have completed 3 years of service but less than 5 years of service and therefore to date have not been considered to be fully vested in their accrued benefits under the Advocate Plan.

137. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), authorizes a participant or beneficiary to bring a civil action for appropriate relief under 29 U.S.C. § 1109(a), against a fiduciary "who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries" and the fiduciary "shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate." Because

the operation of the Plan as a non-ERISA plan was a breach of Defendants' fiduciary duties, the Defendants breached their fiduciary duties and Plaintiffs also seek plan-wide equitable and remedial relief under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), for violations of ERISA §203, 29 U.S.C. § 1053, and other provisions of ERISA against fiduciaries Advocate, AHCN, Advocate Plan Administrative Committee and John and Jane Does 1-20, the Advocate Plan Administrative Committee Member Defendants for failure to comply with the special requirements for cash balance plans as described above.

COUNT III

(Claim for Violation of Reporting and Disclosure Provisions Against Defendant Advocate Plan Administrative Committee and John and Jane Does 1-20, the Advocate Plan Administrative Committee Member Defendants)

138. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs as if fully set forth herein.

1. Summary Plan Descriptions

139. At no time has the Advocate Plan Administrative Committee or its members provided Plaintiffs or any member of the Class with a Summary Plan Description with respect to the Advocate Plan that meets the requirements of ERISA § 102, 29 U.S.C. § 1022, and the regulations promulgated thereunder.

140. Because the Advocate Plan Administrative Committee has been the Plan Administrator of the Plan at all relevant times, it violated ERISA § 104, 29 U.S.C. § 1024, by failing to provide Plaintiffs and members of the Class with adequate Summary Plan Descriptions.

2. Annual Reports

141. At no time has the Advocate Plan Administrative Committee or its members filed an annual report with respect to the Advocate Plan with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, nor has it filed a Form 5500 and associated schedules and attachments, which the Secretary has approved as an alternative method of compliance with ERISA § 103, 29 U.S.C. § 1023.

142. Because the Advocate Plan Administrative Committee has been the Plan Administrator of the Advocate Plan at all relevant times, the Advocate Plan Administrative Committee Defendants have violated ERISA § 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the Advocate Plan with the Secretary of Labor in compliance with ERISA § 103, 29 U.S.C. § 1023, or Form 5500s and associated schedules and attachments, which the Secretary has approved as an alternate method of compliance with ERISA § 103, 29 U.S.C. § 1023.

3. Summary Annual Reports

143. At no time has the Advocate Plan Administrative Committee or its members furnished Plaintiffs or any member of the Class with a Summary Annual Report with respect to the Advocate Plan in compliance with ERISA § 104(b)(3) and regulations promulgated thereunder. 29 U.S.C. § 1024(b)(3).

144. Because the Advocate Plan Administrative Committee has been the Plan Administrator of the Advocate Plan at all relevant times, the Advocate Plan Administrative Committee Defendants have violated ERISA § 104(b)(3), 29 U.S.C. § 1024(b)(3), by failing to furnish Plaintiffs or any member of the Class with a Summary Annual Report with respect to the Advocate

Plan in compliance with ERISA § 104(b)(3) and the regulations promulgated thereunder. 29 U.S.C. § 1024(b)(3).

4. Notification of Failure to Meet Minimum Funding

145. At no time has the Advocate Plan Administrative Committee or its members furnished Plaintiffs or any member of the Class with a Notice with respect to the Advocate Plan pursuant to ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), informing them that Advocate had failed to make payments required to comply with ERISA § 302, 29 U.S.C. § 1082, with respect to the Advocate Plan.

146. Defendant Advocate has been the employer that established and/or maintained the Advocate Plan.

147. At no time has Defendant Advocate funded the Advocate Plan in accordance with ERISA § 302, 29 U.S.C. § 1082.

148. As the employer maintaining the Advocate Plan, Defendant Advocate has violated ERISA § 302, 29 U.S.C. § 1082, by failing to fund the Advocate Plan. Because the Advocate Plan Administrative Committee has been the Plan Administrator of the Advocate Plan at all relevant times, it has violated ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1), and as such may be required by the Court to pay Plaintiffs and each class member up to $110 per day (as permitted by 29 C.F.R. § 2575.502(c)(3)) for each day that Defendant has failed to provide Plaintiffs and each Class member with the notice required by ERISA § 101(d)(1), 29 U.S.C. § 1021(d)(1).

5. Funding Notices

149. At no time has the Advocate Plan Administrative Committee or its members furnished Plaintiffs or

any member of the Class with a Funding Notice with respect to the Advocate Plan pursuant to ERISA § 101(f), 29 U.S.C. § 1021(f).

150. Because the Advocate Plan Administrative Committee has been the Plan Administrator of the Advocate Plan at all relevant times, it has violated ERISA § 101(f) by failing to provide each participant and beneficiary of the Advocate Plan with the Funding Notice required by ERISA § 101(f), and as such may be required by the Court to pay Plaintiffs and each Class member up to $110 per day (as permitted by ERISA § 502(c)(1), 29 U.S.C. § 1132(c)(1), amended by 29 C.F.R. § 2575.502c-1) for each day that Defendant has failed to provide Plaintiffs and each Class member with the notice required by ERISA § 101(f). 29 U.S.C. § 1021(f).

6. Pension Benefit Statements

151. At no time has the Advocate Plan Administrative Committee or its members furnished Plaintiffs or any member of the Class with a Pension Benefit Statement with respect to the Advocate Plan pursuant to ERISA § 105(a)(1), 29 U.S.C. § 1025(a)(1).

152. Because the Advocate Plan Administrative Committee has been the Plan Administrator of the Advocate Plan at all relevant times, it has violated ERISA § 105(a)(1) and as such may be required by the Court to pay Plaintiffs and each Class member up to $110 per day (as permitted by ERISA § 502(c)(1), 29 U.S.C. § 1132(c)(1), amended by 29 C.F.R. § 2575.502c-1) for each day that Defendant has failed to provide Plaintiffs and each Class member with the Pension Benefit Statements required by ERISA § 105(a)(1). 29 U.S.C. § 1025(a)(1).

COUNT IV

(Claim for Failure to Provide Minimum Funding Against Defendant Advocate)

153. Plaintiffs incorporate and re-allege by reference to the foregoing paragraphs as if fully set forth herein.

154. ERISA § 302, 29 U.S.C. § 1082, establishes minimum funding standards for defined benefit plans that require employers to make minimum contributions to their plans so that each plan will have assets available to fund plan benefits if the employer maintaining the plan is unable to pay benefits out of its general assets.

155. Advocate was responsible for making the contributions that should have been made pursuant to ERISA § 302, 29 U.S.C. § 1082, at a level commensurate with that which would be required under ERISA.

156. Since at least 1996, Advocate has failed to make contributions in satisfaction of the minimum funding standards of ERISA § 302, 29 U.S.C. § 1082.

157. By failing to make the required contributions to the Advocate Plan, either in whole or in partial satisfaction of the minimum funding requirements established by ERISA § 302, Defendant Advocate has violated ERISA § 302. 29 U.S.C. § 1082.

COUNT V

(Claim for Failure to Establish the Plan Pursuant to a Written Instrument Meeting the Requirements of ERISA § 402 Against Defendant Advocate)

158. Plaintiffs incorporate and re-allege by reference to the foregoing paragraphs as if fully set forth herein.

159. ERISA § 402, 29 U.S.C. § 1102, provides that every plan will be established pursuant to a written instrument which will provide, among other things, "for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan" and will "provide a procedure for establishing and carrying out a funding policy and method constituent with the objectives of the plan and the requirements of [Title I of ERISA]."

160. Although the benefits provided by the Advocate Plan were described to the employees and retirees of Advocate (and/or its affiliates and subsidiaries) in various written communications, the Advocate Plan has never been established pursuant to a written instrument meeting the requirements of ERISA § 402, 29 U.S.C. § 1102.

161. Defendant Advocate violated section 402 by failing to promulgate written instruments in compliance with ERISA § 402 to govern the Advocate Plan's operations and administration. 29 U.S.C. § 1102.

COUNT VI

(Claim for Failure to Establish a Trust Meeting the Requirements of ERISA § 403 Against Defendant Advocate)

162. Plaintiffs incorporate and re-allege by reference to the foregoing paragraphs as if fully set forth herein.

163. ERISA § 403, 29 U.S.C. § 1103, provides, subject to certain exceptions not applicable here, that all

assets of an employee benefit plan shall be held in trust by one or more trustees, that the trustees shall be either named in the trust instrument or in the plan instrument described in § 402(a), 29 U.S.C. § 1102(a), or appointed by a person who is a named fiduciary.

164. Although the Advocate Plan's assets have been held in trust, the trust does not meet the requirements of ERISA § 403, 29 U.S.C. § 1103.

165. Defendant Advocate violated section 403 by failing to put the Advocate Plan's assets in trust in compliance with ERISA § 403. 29 U.S.C. § 1103.

COUNT VII

(Claim for Clarification of Future Benefits Under ERISA §§ 502(a)(1)(B) and 502(a)(3) Against Defendant Advocate)

166. Plaintiffs incorporate and re-allege by reference to the foregoing paragraphs as if fully set forth herein.

167. ERISA § 502(a)(1)(13), 29 U.S.C. § 1102(a)(1)(13), provides, in part, that a participant or beneficiary may bring a civil action to "clarify his rights to future benefits under the terms of the plan."

168. Plaintiffs and members of the class have not been provided ERISA-compliant benefit statements.

169. Pursuant to ERISA §§ 502(a)(1)(13), (3), 29 U.S.C. §§ 1132(a)(1)(13), (3), once the Plan is made compliant with ERISA, Plaintiffs seek to clarify their rights under the terms of the Plan and to require Defendant Advocate to provide Plaintiffs and the Class ERISA-compliant benefit statements.

COUNT VIII
(Claim for Civil Money Penalty Pursuant to ERISA § 502(a)(1)(A) Against Defendant Advocate, Defendant Advocate Plan Administrative Committee, and John and Jane Does 1-20, the Advocate Plan Administrative Committee Member Defendants)

170. Plaintiffs incorporate and re-allege by reference to the foregoing paragraphs as if fully set forth herein.

171. ERISA § 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A), provides that a participant may bring a civil action for the relief provided in ERISA § 502(c), 29 U.S.C. § 1132(c).

172. ERISA § 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R. § 2575.502c-3, provides that an employer maintaining a plan who fails to meet the notice requirement of ERISA § 101(d), 29 U.S.C. § 1021(d), with respect to any participant and beneficiary may be liable for up to $110 per day from the date of such failure.

173. ERISA § 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R. § 2575.502c-3, provides that an administrator of a defined benefit pension plan who fails to meet the notice requirement of ERISA § 101(f), 29 U.S.C. § 1021(f), with respect to any participant and beneficiary may be liable for up to $110 per day from the date of such failure.

174. ERISA § 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R. § 2575.502c-3, provides that an administrator of a defined benefit pension plan who fails to provide a Pension Benefit Statement at least once every three years to a participant with a nonforfeitable accrued benefit who is employed by the

employer maintaining the plan at the time the statement is to be furnished as required by ERISA § 105(a), 29 U.S.C. § 1025(a), may be liable for up to $110 per day from the date of such failure.

175. As Defendant Advocate, as the employer, has failed to give the notices required by ERISA § 101(d), 29 U.S.C. § 1021(d), as set forth in Count II Subpart 4, Defendant Advocate is liable to Plaintiffs and each member of the Class in an amount up to $110 per day from the date of such failures until such time that notices are given and the statement is provided, as the Court, in its discretion, may order.

176. As the Advocate Plan Administrative Committee, as Plan Administrator of the Plan, has failed to give the notices required by ERISA § 101(f), 29 U.S.C. § 1021 (f), and the Pension Benefit Statement required by ERISA § 105(a), 29 U.S.C. § 1025(a), as set forth in Count II Subparts 5 through 6, the Advocate Plan Administrative Committee and the Advocate Plan Administrative Committee Member Defendants are liable to the Plaintiffs and each member of the Class in an amount up to $110 per day from the date of such failures until such time that notices are given and the statement is provided, as the Court, in its discretion, may order.

COUNT IX

(Claim for Breach of Fiduciary Duty Against All Defendants)

177. Plaintiffs incorporate and re-allege by reference to the foregoing paragraphs as if fully set forth herein.

178. Plaintiffs bring this Count VII for breach of fiduciary duty pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2).

1. Breach of the Duty of Prudence and Loyalty

179. This sub-Count alleges fiduciary breach against all Defendants.

180. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), provides in pertinent part that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

(a) for the exclusive purpose of:

(i) providing benefits to participants and beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims . . . [and]

(c) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this [title I of ERISA] and title IV.

181. As fiduciaries with respect to the Advocate Plan, Defendants had the authority to enforce each provision of ERISA alleged to have been violated in the foregoing paragraphs pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). Having the authority to enforce

the provisions of ERISA at those respective times, ERISA §§ 404(a)(1)(A)-(D), 29 U.S.C. §§ 1104(a)(1)(A)-(D), imposed on Defendants the respective duty to enforce those provisions in the interest of the participants and beneficiaries of the Advocate Plan during the times that each was a fiduciary of the Advocate Plan.

182. Defendants have never enforced any of the provisions of ERISA set forth in Counts I-V with respect to the Advocate Plan.

183. By failing to enforce the provisions of ERISA set forth in Counts I-V, Defendants breached the fiduciary duties that they owed to Plaintiffs and the Class.

184. The failure of Defendants to enforce the funding obligations owed to the Plan has resulted in a loss to the Advocate Plan equal to the foregone funding and earnings thereon, and profited Defendant Advocate by providing it the use of the money owed to the Advocate Plan for its general business purposes.

2. Prohibited Transactions

185. This sub-Count alleges violations on behalf of all Defendants.

186. ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), prohibits a fiduciary with respect to a plan from directly or indirectly causing a plan to extend credit to a party in interest, as defined in ERISA § 3(14), 29 U.S.C. § 1002(14), if he or she knows or should know that such transaction constitutes an extension of credit to a party in interest.

187. ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits a fiduciary with respect to a plan from directly or indirectly causing a plan to use assets for

the benefit of a party in interest if he or she knows or should know that such transaction constitutes a use of plan assets for the benefit of a party in interest.

188. ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1), prohibits the use of plan assets by a fiduciary with respect to a plan for his or her own interest or for his or her own account.

189. As fiduciaries with respect to the Plan and, with respect to Advocate, as an employer of employees covered by the Plan, and, with respect to Defendants Brady, an Officer of Advocate, the Defendants at all relevant times were parties in interest with respect to the Advocate Plan pursuant to ERISA §§ 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

190. By failing to enforce the funding obligations created by ERISA and owed to the Plan, Defendants extended credit from the Advocate Plan to Advocate in violation of ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), when Defendants knew or should have known that their failure to enforce the funding obligation constituted such an extension of credit.

191. By failing to enforce the funding obligations created by ERISA and owed to the Advocate Plan, Defendants used Advocate Plan assets for Advocate's own benefit, when Defendants knew or should have know that their failure to enforce the funding obligations constituted such a use of Advocate Plan assets, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

192. By failing to enforce the funding obligations created by ERISA and owed to the Advocate Plan, Defendants used Advocate Plan assets in Advocate's interest in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

193. The failure of Defendants to enforce the funding obligations owed to the Advocate Plan has resulted in a loss to the Advocate Plan equal to the foregone funding and earnings thereon.

194. The failure of Defendants to enforce the funding obligations owed to the Advocate Plan has profited Defendant Advocate by providing it the use of money owed to the Advocate Plan for its general business purposes.

3. Failure to Monitor Fiduciaries

195. This sub-Count alleges fiduciary breach against Defendant Advocate.

196. As alleged above, during the Class Period, Defendant Advocate was a named fiduciary pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or a de facto fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, it was bound by the duties of loyalty, exclusive purpose, and prudence.

197. The scope of the fiduciary responsibilities of Advocate included the responsibility to appoint, and remove, and thus, monitor the performance of other fiduciaries.

198. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries perform their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

199. The monitoring duty further requires that appointing fiduciaries have procedures in place so that they may review and evaluate, on an ongoing basis,

whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to plan participants or for deciding whether to retain or remove them.

200. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with the complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

201. Defendant Advocate breached its fiduciary monitoring duties by, among other things: (a) failing to appoint persons who would run the Plan as an ERISA plan; (b) failing to ensure that the monitored fiduciaries appreciated the true extent of not running the Plan as an ERISA Plan; (c) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees such that they could make sufficiently informed fiduciary decisions with respect to the Plan; and (d) failing to remove appointees whose performance was inadequate in that they continued to run the Plan as a non-ERISA Plan, and who breached their fiduciary duties under ERISA.

202. The failure of Defendants to enforce the funding obligations owed to the Plan has resulted in a

loss to the Advocate Plan equal to the foregone funding and earnings thereon, and profited Defendant Advocate by providing it the use of money owed to the Advocate Plan for its general business purposes.

4. Co-Fiduciary Liability

203. This sub-Count alleges co-fiduciary liability against all Defendants.

204. As alleged above, all Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or de facto fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

205. ERISA § 405(a), 29 U.S.C. § 1105, imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach. Defendants breached all three provisions.

206. Knowledge of a Breach and Failure to Remedy. ERISA § 405(a)(3), 29 U.S.C. § 1105, imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach. Each of the Defendants knew of the breaches by the other fiduciaries and made no efforts, much less reasonable ones, to remedy those breaches.

207. Because Defendants knew that the Plan was not being run as an ERISA Plan, Defendants knew that the other Defendants were breaching their duties

by not complying with ERISA. Yet, they failed to undertake any effort to remedy these breaches.

208. Knowing Participation in a Breach. ERISA § 405(a)(1), 29 U.S.C. § 1105(1), imposes liability on a fiduciary for a breach of fiduciary responsibility by another fiduciary with respect to the same plan if he knowingly participates in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach. Advocate knowingly participated in the fiduciary breaches of the other Defendants in that it benefited from the Plan not being run as an ERISA Plan.

209. Enabling a Breach. ERISA § 405(a)(2), 29 U.S.C. § 1105(2), imposes liability on a fiduciary if, by failing to comply with ERISA § 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

210. The failure of Defendant Advocate to monitor the Advocate Plan Administrative Committee enabled that committee to breach its duties.

211. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan is currently underfunded, meaning that the Plan does not have sufficient assets to pay all accrued benefits it has promised to its participants and beneficiaries and is legally obligated to pay under ERISA.

212. The failure of Defendants to enforce the funding obligations owed to the Plan has resulted in a loss to the Advocate Plan equal to the foregone funding and earnings thereon, and profited Defendant Advocate by providing it the use of money owed to the Advocate Plan for its general business purposes.

COUNT X

(Claim for Declaratory Relief That the Church Plan Exemption Violates the Establishment Clause of the First Amendment of the Constitution, and Is Therefore Void and Ineffective)

213. Plaintiffs incorporate and re-allege by reference to the foregoing paragraphs as if fully set forth herein.

214. The ERISA Church Plan exemption is an accommodation that exempts churches and associations of churches, under certain circumstances, from compliance with ERISA.

215. The ERISA Church Plan exemption, as claimed by Advocate, is an attempt to extend the accommodation beyond churches and associations of churches, to Advocate—a nonprofit hospital conglomerate that has chosen to compete with commercial businesses, including other non-profits as well as for-profits, by entering the economic arena and trafficking in the marketplace. Extension of the Church Plan exemption to Advocate violates the Establishment Clause because it (A) is not necessary to further the stated purposes of the exemption, (B) harms Advocate workers, (C) puts Advocate competitors at an economic disadvantage, (D) relieves Advocate of no genuine religious burden created by ERISA, and (E) creates more government entanglement with alleged religious beliefs than compliance with ERISA creates.

A. Not Necessary to Further Stated Purpose. Congress enacted the Church Plan exemption to avoid "examination of books and records . . . an unjustified invasion of the confidential relationship with regard to churches and their religious

activities."[3] This purpose has no application to Advocate, which is neither run by nor intimately connected to any church financially. And, unlike a church, Advocate has *no confidential books and records* to shield from government scrutiny. Advocate already purports to disclose all material financial records and relationships when it seeks Medicare and Medicaid reimbursements and issues tax exempt bonds.

B. Harms Workers. Employers, including Advocate, are not legally required to provide pensions; instead, they choose to provide pensions in order to reap tax rewards and attract and retain employees in a competitive labor market. Advocate tells prospective employees that any choice of faith, or lack thereof, is not a factor in the recruiting and hiring of Advocate employees. Thus, as a practical matter, and by Advocate's own design, its pension plan participants include people of a vast number of divergent faiths, as well as those who belong to no faith. In choosing to recruit and hire from the public at large, Advocate must be willing to accept neutral regulations, such as ERISA, imposed to protect those employees' legitimate interests. To be constitutional, an accommodation such as the Church Plan exemption must not impose burdens on non-adherents without due consideration of their interests. The Church Plan exemption, as claimed by Advocate, places its tens of thousands of longtime employees' justified reliance on their pension benefits at great risk, including because the Plan is uninsured and, upon information and belief, underfunded. In addition,

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[3] S. Rep. No. 93-383 (1972), *reprinted in* 1974 U.S.C.C.A.N. 4889, 4965.

Advocate fails to provide the multitude of other ERISA protections designed to safeguard its employees' pensions. The Church Plan exemption, as claimed by Advocate, provides no consideration of the harm that it causes to Advocate's employees.

C. Puts Advocate's Competitors at an Economic Disadvantage. Advocate's commercial rivals face material disadvantages in their competition with Advocate because the rivals must use their current assets to fully fund, insure (through premiums to the PBGC), and administer their pension plans, as well as providing other ERISA protections. In claiming that the Advocate Plan is an exempt Church Plan, Advocate enjoys a material competitive advantage because it is able to divert significant cash, which otherwise would be required to fund, insure (through premiums to the PBGC), and administer the Advocate Plan, to its competitive growth strategy. To be constitutional, an accommodation such as the Church Plan exemption must take adequate account of harm to nonbeneficiaries. The Church Plan exemption, as applied by Advocate, provides no consideration of the disadvantage it creates for Advocate's competitors.

D. Relieves No Genuine Religious Burden Imposed by ERISA. An exemption exclusively for religion must alleviate a significant, state-imposed interference with religious exercise. The Church Plan exemption, as claimed by Advocate, responds to no genuine burden created by ERISA on any of Advocate's religious practices. ERISA is materially indistinguishable from the array of neutral Congressional enactments that do not

significantly burden religious exercise when applied to commercial activities. Moreover, Advocate maintains multiple separate ERISA-governed plans, which further evidences that ERISA creates no undue burden on any genuine religious practice of Advocate.

E. Creates Government Entanglement with Alleged Religious Beliefs. An Advocate exemption requires courts and agencies to examine unilateral religious "convictions" of a non-church entity and determine if they are "shared" with a church, in the absence of any actual church responsible for the pensions. This creates entanglement between government and putative religious beliefs. ERISA compliance, on the other hand, requires *zero* entanglement with religion for Advocate because ERISA is a neutral statute that regulates pension protections and Advocate has no relevant confidential books, records or relationships. Thus, an extension of the Church Plan exemption to Advocate produces state entanglement with alleged religious beliefs while compliance with ERISA creates no meaningful state entanglement with alleged religious beliefs.

216. Plaintiffs seek a declaration by the Court that the Church Plan exemption, as claimed by Advocate, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered against the Defendants on all claims and requests that the Court award the following relief:

A. Declaring that the Advocate Plan is an employee pension benefit plan within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2), is a defined benefit pension plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35), and is not a Church Plan within the definition of ERISA § 3(33), 29 U.S.C. § 1002(33). Ordering Advocate to reform the Advocate Plan to bring it into compliance with ERISA and to have the Advocate Plan comply with ERISA, including as follows:

1. Revising the Plan documents to reflect that the Plan is a defined benefit plan regulated by ERISA.

2. Requiring Advocate to fund the Advocate Plan in accordance with ERISA's funding requirements, disclose required information to the Advocate Plan, participants, and beneficiaries, and otherwise comply with all other reporting, vesting, and funding requirements of Parts 1, 2 and 3 of Title I of ERISA, 29 U.S.C. §§ 1021-31, 1051-61, 1081-85.

3. Reforming the Advocate Plan to comply with ERISA's vesting and accrual requirements and providing benefits in the form of a qualified joint and survivor annuity.

4. Requiring the adoption of an instrument governing the Advocate Plan that complies with ERISA § 402, 29 U.S.C. § 1102.

5. Requiring Advocate to comply with ERISA reporting and disclosure requirements, including by filing Form 5500 reports, distributing ERISA-compliant Summary Plan Descriptions, Summary Annual Reports, and ERISA-compliant Participant Benefit Statements, and providing Notice

of the Advocate Plan's funding status and deficiencies.

6. Requiring clarification of rights to future benefits pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1102(a)(1)(B).

7. Requiring the establishment of a Trust in compliance with ERISA § 403, 29 U.S.C. § 1103.

B. Requiring Advocate, as a fiduciary of the Plan, to make the Advocate Plan whole for any losses and disgorge any Advocate profits accumulated as a result of fiduciary breaches.

C. Appointing an Independent Fiduciary to hold the Advocate Plan's assets in trust, to manage and administer the Advocate Plan and its assets, and to enforce the terms of ERISA.

D. Requiring Advocate to pay a civil money penalty of up to $110 per day to Plaintiffs and each Class member for each day it failed to inform Plaintiffs and each Class member of its failure to properly fund the Plan.

E. Requiring Advocate to pay a civil money penalty of up to $110 per day to Plaintiffs and each Class member for each day it failed to provide Plaintiffs and each Class member with a Funding Notice.

F. Requiring Advocate to pay a civil money penalty of up to $110 per day to Plaintiffs and each Class member for each day it failed to provide a benefit statement under ERISA § 105(a)(1)(B), 29 U.S.C. § 1025(a)(1)(B).

G. Ordering declaratory and injunctive relief as necessary and appropriate, including enjoining the

Defendants from further violating the duties, responsibilities, and obligations imposed on them by ERISA with respect to the Advocate Plan.

H. Declaring, with respect to Count IX, that the Church Plan exemption, as claimed by Advocate, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective.

I. Awarding to Plaintiffs attorneys' fees and expenses as provided by the common fund doctrine, ERISA § 502(g), 29 U.S.C. § 1132(g), and/or other applicable doctrine.

J. Awarding to Plaintiffs taxable costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), 28 U.S.C. § 1920, and other applicable law.

K. Awarding to Plaintiffs pre-judgment interest on any amounts awarded pursuant to law.

L. Awarding, declaring or otherwise providing Plaintiffs and the Class all relief under ERISA § 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that the Court deems proper.

DATED: March 17, 2014.

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EVANGELICAL HEALTH SYSTEMS CORPORATION MASTER PENSION TRUST

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EVANGELICAL HEALTH SYSTEMS CORPORATION MASTER PENSION TRUST

THIS AGREEMENT, made this __ day of _____, 1993, by and between Evangelical Health Systems Corporation, an Illinois not-for-profit corporation (the "Company") and The Northern Trust Company, located at Chicago, Illinois, and its successor or successors and assigns in the trust hereby evidenced, as trustee (the "Trustee"),

WITNESSETH THAT:

WHEREAS, the Company maintains, and hereafter may establish, adopt, or assume, various defined benefit and defined contribution pension plans which meet the requirements of "qualified plans" under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), which plans are funded directly through the trust fund established hereunder; and

WHEREAS, it now is considered desirable and in the best interests of the Company, its employees who are or who in the future may be covered by such plans and their beneficiaries that provision be made for the collective investment of part or all of the assets of the plans, and this agreement is designed for that purpose;

NOW, THEREFORE, IT IS AGREED, in consideration of the mutual undertakings of the parties hereto, as follows:

ARTICLE 1

Introduction

1.1 The Trust, Plans.This Trust may be referred to as "Evangelical Health Systems Corporation Master Pension Trust." Unless the context indicates other-

wise, the terms "Trust", "agreement", "herein", "hereunder" and similar terms mean this agreement and the Trust hereby evidenced. The qualified plans participating in this Trust from time to time are referred to herein collectively as the "plans" and individually as a "plan". The Company shall deliver to the Trustee a certified or executed copy of each plan and of any amendments thereto for convenience of reference, and the rights, powers and duties of the Trustee shall be governed only by the terms of this Trust agreement without reference to the provisions of the plans.

1.2 Fiduciary Responsibilities. All fiduciaries with respect to the Trust (including the Company, the Trustee, the plan administrator of each participating plan and any investment managers and custodians appointed hereunder) shall discharge their duties with respect to the Trust solely in the interests of participants and beneficiaries of the plans and for the exclusive purpose of providing benefits under the plans and defraying reasonable expenses of administration of the plans and this Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

ARTICLE 2

Management of the Trust Fund

2.1 The Trust Fund. Unless the context indicates otherwise, the term "trust fund" as of any date means all property then held under this agreement by the Trustee, any custodian or any insurance Company.

2.2 Plan Administrator. The "plan administrator" with respect to each plan is the Pension Committee. The Pension Committee is a committee consisting of

three or more members appointed by the Board of Directors of the Company which shall be responsible for carrying out the duties as plan administrator and (except for duties specifically vested in the Trustee) for the administration of the provisions of each plan. In addition to the powers, rights, duties and responsibilities specifically granted to or imposed on a plan administrator under a plan or elsewhere in this Trust, the plan administrator of a plan shall have the responsibility for directing the Trustee with respect to the distribution of benefits of that plan from the trust fund. The Company shall certify to the Trustee the person or persons appointed as the plan administrator with respect to each plan and the Trustee may rely on the last such certificate received by it.

2.3 Contributions to the Trust Fund. The Company shall, from time to time, make contributions to the Trustee as provided in the plans. The Trustee shall be accountable to the Company for all contributions received from the Company (including those of employees participating in a plan), but the Trustee shall have no duty to see that the contributions received comply with the provisions of the plans, nor shall the Trustee be obliged or have any right to enforce or collect any contributions from the Company or otherwise see that the funds are deposited according to the provisions of the plans. The Trustee shall not be responsible for establishing a funding policy for any plan.

2.4 Trustee's Powers and Duties. Except to the extent to which authority with respect to the management of the trust fund has been allocated to others in accordance with this agreement, the Trustee shall have exclusive authority and discretion to manage and control the trust fund. (In this regard, the authority to direct distributions and transfers of plan benefits

under a plan has been allocated to the plan administrator of that plan, the authority to direct investments may be allocated to one or more investment managers or participants pursuant to section 3.2, and the authority to hold assets of the trust fund may be allocated to one or more custodians or insurance companies pursuant to section 3.3.) Except as otherwise provided by law, the Trustee shall not be responsible for the investment of any assets of the trust fund which are subject to management by the Company or by an investment manager or subject to individual investment direction by a participant or for seeing that the requirement of proper diversification of such assets or the total trust fund has been met, and the Trustee need not take into account the investment of any assets of the trust fund which are subject to management by an investment manager, plan participant or the Company in meeting its responsibility for seeing that the requirement of proper diversification has been met with respect to the assets of the trust fund which are not subject to management by an investment manager, plan participant or the Company. The Trustee shall have the following powers, rights and duties in addition to those provided elsewhere in this agreement or by law:

(a) To invest and reinvest part or all of the trust fund in any real or personal property (including investments in any stocks, bonds, debentures, mutual fund shares, notes, commercial paper, treasury bills, options, commodities, partnership interests, equipment trust certificates, investment trust certificates, venture capital investments, any common, commingled or collective trust funds or pooled investment funds described in section 2.5, any deposit accounts or funds

maintained by a life insurance company in accordance with an agreement between the trustee and such insurance company or a group annuity contract or other contract issued by such insurance company to the trustee as contract-holder, any interest bearing deposits held by any bank or similar financial institution, any qualifying employer real property, as defined in Section 407(d)(5) of the Employee Retirement Income Security Act of 1974, as amended, and any other real or personal property) and to diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

(b) To retain in cash such amounts as the Trustee considers advisable and as are permitted by applicable law and to deposit any cash so retained in any depository (including any bank acting as Trustee) which the Trustee may select.

(c) To manage, sell, insure and otherwise deal with all real and personal property held by the Trustee on such terms and conditions as the Trustee shall decide.

(d) To vote stock and other voting securities personally or by proxy (and to delegate the Trustee's powers and discretions with respect to such stock or other voting securities to such proxy), to exercise subscription, conversion and other rights and options (and make payments from the trust fund in connection therewith), to take any action and to abstain from taking any action with respect to any reorganization, consolidation, merger,

dissolution, recapitalization, refinancing and any other plan or change affecting any property constituting a part of the trust fund (and in connection therewith to delegate the Trustee's discretionary powers and pay assessments, subscriptions and other charges from the trust fund), to hold or register any property from time to time in the Trustee's name or in the name of a nominee or to hold it unregistered or in such form that title shall pass by delivery; provided that except as authorized by regulations issued by the Secretary of Labor, the indicia of ownership of the assets of the trust fund shall not be maintained outside the jurisdiction of the district courts of the United States, and to borrow from anyone (to the extent permitted by law) such amounts from time to time as the Trustee considers desirable to carry out this trust (and to mortgage or pledge all or part of the trust fund as security).

(e) When directed by an investment manager the Trustee shall acquire, retain or dispose of such investments as the investment manager directs, and when directed by the Company or the plan administrator the Trustee shall (i) establish investment funds and transfer assets between investment funds (and to a custodian) as the Company directs, (ii) invest assets in a deposit account or fund or group annuity contract or other contract maintained or issued by a life insurance company (and shall apply for or execute any necessary contract or agreement) as the Company directs, (iii) acquire, retain or dispose of qualifying employer real property

as the Company directs, and (iv) effect withdrawals from the investment funds.

(f) When directed by the Company, (i) to enter into such agreements as are necessary to implement investment in financial futures contracts to hedge the equity exposure of an investment fund; (ii) to transfer initial margin to a futures commission merchant or third party safekeeping bank pursuant to directions from the person to whom or entity to which investment responsibility for such investment fund has been allocated hereunder; and (iii) to pay or demand variation margin to or from a futures commission merchant in accordance with industry practice based on daily marking to market calculations; provided, however, that the Trustee shall have no investment or custodial responsibility with respect to assets transferred to a futures commission merchant or third party safekeeping bank.

(g) when directed by the Company, to lend securities of the trust fund held by the Trustee by entering into a written agreement with the Company, the terms of which agreement shall be consistent with Department of Labor Prohibited Transaction Exemption 81-6 or any successor exemption and which agreement shall direct the Trustee (i) to enter into a loan agreement with a borrower or borrowers and (ii) to transfer securities to the borrower and invest the collateral received in exchange for the securities; provided, however, that the borrower or borrowers shall have the authority and responsibility to vote

securities it or they have borrowed and further provided that the Trustee shall maintain a record of the market value of the loaned securities and shall be paid such reasonable compensation as agreed to by the Trustee and the Company.

(h) When directed by the plan administrator of a plan (i) to make payments from the trust fund without inquiring as to whether a recipient is entitled thereto (and the Trustee shall not be liable for any such payment made in good faith), (ii) to transfer a participant's benefits in accordance with the provisions of the plan for his benefit to any other trust or other funding entity which forms a part of another pension, profit sharing, savings or other retirement plan which meets the requirements of a "qualified plan" under Section 401(a) of the Code or an individual retirement account, and (iii) to receive and hold for any participant or any employee of the Company any qualifying rollover contribution permitted under the plan or any funds or property transferred in accordance with the provisions of the plan to the Trustee from any other trust or other funding entity which forms a part of another pension, profit sharing, savings or other retirement plan which meets the requirements of a "qualified plan" under Section 401(a) of the Code or an individual retirement account.

(i) To waive, modify, reduce, compromise, release, contest, arbitrate, settle or extend the time of payment of any claim or demand of any nature in favor of or against the

Trustee or all or any part of the trust fund, to retain any disputed property until an appropriate final adjudication or release is obtained, and to maintain in the Trustee's discretion any litigation the Trustee considers necessary in connection with the plans or the trust fund.

(j) To withhold, if the Trustee considers it advisable, all or any part of any payment required to be made hereunder as may be necessary and proper to protect the Trustee or the trust fund against any liability or claim on account of any estate, inheritance, income or other tax or assessment attributable to any benefit payable under a plan, and to discharge any such liability with any part or all of such payment so withheld.

(k) To maintain records reflecting all receipts and payments under this agreement and such other records as the Company may specify, which records may be audited from time to time by the Company or anyone named by the Company.

(l) To report to the Company as of each valuation date (as described in section 4.3) and at such other times as the Company may request the then net worth of each investment fund (that is, the fair market value of all assets of each investment fund, less liabilities known to the Trustee, other than liabilities to persons entitled to benefits under the plans) on the basis of such data and information as the Trustee considers reliable; provided, however, the Trustee may conclusively rely upon the determination of the issuing insurance

company with respect to the fair market value of any insurance contract and upon the determination of the investment manager or Company with respect to any asset subject to management by the investment manager or the Company for which the Trustee deems not to have a readily ascertainable value.

(m) To furnish periodic accounts to the Company for such periods as the Company may specify showing all investments, receipts, disbursements and other transactions involving the Trust during the accounting period, and also showing the assets of each investment fund and the trust fund held at the end of that period (which account shall be conclusive on all persons to the extent permitted by law, except as to any act or transaction as to which the Company files with the Trustee written exceptions or objections within 180 days after receipt of the account); provided, however, that in no event shall the Trustee be precluded from having its accounts settled by a judicial proceeding.

(n) To furnish the Company with such information in the Trustee's possession as the Company may need for tax or other purposes.

(o) To employ accountants, advisors, agents, counsel, consultants, custodians, depositories, experts and other persons, to delegate discretionary powers to such persons and to reasonably rely upon information and advice furnished by such persons; provided that each such delegation and the acceptance thereof by each such person shall be in writing; and provided further that the Trustee may

not delegate its responsibilities as to the management or control of the assets of the trust fund.

(p) To perform all other acts which in the Trustee's judgment are appropriate for the proper administration of the trust fund.

2.5 Collective Investment Trusts.Subsection 2.4(a) permits the Trustee, any investment manager, the Company or a subtrustee designated by the Company to invest any part or all of the trust assets, which relate to plans qualified under Section 401(a) of the Code, for which it has investment responsibility in any common, collective or commingled trust fund or pooled investment fund which is qualified under Section 401(a) and entitled to tax exemption under Section 501(a) of the Code and which is maintained by a bank, trust company or another person or entity (including a bank, trust company or another person or entity acting as Trustee). Accordingly, the Trustee, any investment manager, the Company or a subtrustee designated by the Company may invest in any such fund, provided that any investment of the assets of an investment fund shall substantially comply with the investment requirements of that investment fund. To the extent that any Trust assets are invested in any such fund, such assets shall be held and invested by the trustee thereunder and the provisions of the documents under which such common, collective or commingled trust fund or pooled investment fund are maintained shall govern any investment therein and such provisions are hereby incorporated herein and made a part of this agreement.

2.6 Plan Accounts. Upon the request of the Company, separate account (a "plan account") shall be established and maintained in the name of each plan

to reflect the portion of the trust fund attributable to that plan. As of each December 31, and at such other times as the Company shall direct, each plan account shall be appropriately adjusted, in accordance with such rules as may be established by the Company, to reflect any contributions and disbursements made under a plan during the accounting period ending on that date and the plants share of income, losses, appreciation and depreciation of the trust fund during that accounting period and such other items as the Company may determine. To the extent investment funds are established as a part of the trust fund, each plan account shall reflect the portion of each investment fund attributable to a plan as provided in section 4.3.

2.7 Single Fund. Unless and only to the extent otherwise directed by the Company, all assets of the trust fund and of each investment fund, and the income thereon, shall be held and invested as a single fund for the purpose of providing benefits under the plans, and the Trustee shall not be required to make any separate investment of the trust fund or an investment fund for the account of any single plan. If for any purpose it becomes necessary as of any date to determine the portion of the trust fund or any investment fund allocable to any single plan or to any particular group of employees or former employees of the Company covered by a plan, such portion of the trust fund or investment fund shall be determined by the Company. In making such determination, the Company shall take into consideration the separate plan accounts maintained to reflect the assets of each plan and such other factors as it considers appropriate, and may obtain the advice and assistance of an actuary selected by it for this purpose. Any such determination by the Company shall be conclusive

upon the Company, employees and former employees of the Company and all other persons. The Trustee shall have no duty or responsibility to question any determination or direction by the Company under this section.

ARTICLE 3

Investment Funds, Investment Managers and Custodians

3.1 Investment Funds. From time to time the Company may cause the Trustee to establish one or more investment funds (the "investment funds") for the purpose of reflecting the separate investment and reinvestment of the trust fund. The Company shall be responsible for directing the Trustee regarding the allocation of the assets of the trust fund among the investment funds. The Trustee shall have responsibility for the investment of an investment fund unless an investment manager has been appointed with respect to that fund or unless the investment fund is invested in a deposit account, deposit administration fund or group annuity contract established with a life insurance company, or unless a plan participant has the right to individually direct, through the plan administrator at a specified period or periods during the applicable plan year, the investments of a particular investment fund or unless the Company has assumed investment responsibility with respect to such investment fund. All income, losses, appreciation and depreciation attributable to the assets of an investment fund shall be credited to that fund. Investments of each investment fund shall be made in accordance with investment guidelines established by the Company for that investment fund. The Company shall provide the Trustee and each investment manager appointed with respect to an investment fund with

the investment guidelines for that fund and with any modifications in such investment guidelines made from time to time by the Company. Notwithstanding the fact that an investment manager may be appointed with responsibility for the management of an investment fund or the Company has assumed investment responsibility for an investment fund, unless directed otherwise by the investment manager or the Company, as the case may be, the Trustee shall have the responsibility for the investment of cash balances held by it from time to time as a part of such investment fund in short term cash equivalents (such as short term commercial paper, treasury bills and similar securities, and for this purpose the Trustee may invest in any appropriate common, commingled or collective short term investment fund). In addition, the Trustee shall have the power, right and duty to sell any such short term investments as may be necessary to carry out the instructions of the investment manager, plan participant or the Company with respect to the investment of the investment fund. With respect to any investment fund over which the Company has assumed investment responsibility, the Trustee, acting only as directed by the Company, shall enter into such agreements as are necessary to facilitate any investment, including agreements entering into a limited partnership, subtrust or the participation in real estate funds. The Trustee shall have no duty or responsibility to make any investment review of, or consider the propriety of holding or selling, any investment fund over which the Company has assumed investment responsibility. For purposes of this section 3.1, "subtrust" means assets of an investment fund which are held by a subtrustee designated by the Company. With respect to each subtrust, the subtrustee

shall have custody of any portion of the assets of the trust fund allocated to it by the Company.

3.2 Investment Managers.The Company or the plan administrator (as provided in a plan) may from time to time appoint one or more professional investment advisers other than the Trustee as an "investment manager" of the entire trust fund or any investment fund maintained as a part of the trust fund. Any such appointment shall be made by written notice to the investment manager and the Trustee and shall specify the portion of the trust fund to be managed by the investment manager and shall specify that the investment manager shall have complete investment responsibility for such portion of the trust fund. Upon such notice to the Trustee of the appointment of an investment manager, the investment manager shall be authorized to direct the Trustee regarding the investment and reinvestment of the assets of the portion of the trust fund subject to management by the investment manager and the Trustee shall receive, hold and transfer assets purchased or sold by the investment manager in accordance with its directions. The appointment of an investment manager shall continue in effect until the Trustee receives written notice to the contrary from the Company or the investment manager. An investment manager may resign at any time upon thirty days' prior written notice to the Company or the plan administrator, as the case maybe, and the Company will thereafter notify the Trustee. The Company or the plan administrator, as the case may be, may remove an investment manager at any time upon prior written notice to the investment manager and the Trustee. An investment manager shall have complete investment responsibility, including the voting of proxies, for the assets of the trust fund with respect to which it has

been appointed as investment manager and, except as otherwise provided by law, the Trustee shall have no obligation as to the investment of such assets during the period they are subject to management by an investment manager. Each investment manager appointed pursuant to this section shall be a registered investment adviser under the Investment Advisers Act of 1940, a bank (as defined in said Act), or a life insurance company qualified to manage the assets of the plan under the laws of more than one state. In addition, each investment manager shall be required to acknowledge to the Company or the plan administrator, as the case may be, in writing that it accepts such appointment and that it is a fiduciary with respect to the plans and trust. Additionally, a plan may provide that a plan participant may individually direct, through the plan administrator at a specified period or at specified periods during the applicable plan year, the Trustee as to the investment of plan assets allocated to his accounts under a defined contribution plan or retirement income account maintained by the Company. Such direction will be made in accordance to the rules and procedures set forth in the plan, and the Trustee shall have no obligations as to the investment of such assets during the period they are subject to management by a participant.

3.3 Custodians. If a national banking association or a state bank is appointed as the investment manager of any investment fund, the Company or the plan administrator, as the case may be, may, with the Trustee's consent, also designate such bank to be employed by the Trustee as "custodian" of the assets from time to time forming part of that investment fund. In such event, at the direction of the Company or the plan administrator, as the case may be, the Trustee shall enter into an appropriate custodial

agreement with the bank appointed as investment manager naming the investment manager as custodian of the investment fund and delegating the Trustee's powers with respect to the management of the investment fund to the custodian. Upon such an appointment the Trustee shall transfer the assets of the investment fund to the custodian and the custodian shall have responsibility for the holding and administration of the assets of the investment fund, as agent of the Trustee, until its employment as custodian is terminated, at which time the custodian shall return all assets of the investment fund to the Trustee. The Trustee shall be entitled to indemnification under section 5.9 notwithstanding that it has consented to the designation of a custodian and notwithstanding any indemnity agreement in a custodial agreement between the Trustee and the custodian. Notwithstanding the foregoing, if the Company or the plan administrator, as the case may be, designates a life insurance company as the investment manager of any investment fund, the insurance company also may be designated as custodian of the investment fund. In such event, at the direction of the Company or the plan administrator, as the case may be, the Trustee shall execute an appropriate agreement reflecting the investment of the assets of that investment fund by the insurance company and the insurance company shall for purposes of this agreement be deemed to be the custodian of the assets of the investment fund for which the insurance company is designated as investment manager. The Trustee shall, in such case, be entitled to the same indemnification as provided above. In addition to its duties as investment manager, each custodian shall maintain the records and accounts and shall submit to the appropriate persons the periodic reports otherwise required of

the Trustee with respect to the portion of the trust fund held by the custodian.

ARTICLE 4

Participating Plans and Trusts, Trust Accounting

4.1 Eligible Plans and Trusts. Any pension, profit sharing, savings or other retirement plan maintained or hereafter established, adopted or assumed by the Company which meets the requirements of a qualified plan under Section 401(a) of the Code shall be considered an "eligible plan," provided that such plan permits the deposit of part or all of its assets in this Trust. A schedule of the eligible plans is attached hereto as Appendix A.

4.2 Participating Plans. At the direction of the Company, the Trustee shall accept a transfer of assets from an eligible plan and, upon the acceptance of such assets, such eligible plan shall become a plan under this Trust. Until all of its investments in this Trust have been withdrawn and the proceeds distributed, a plan shall continue as such. As provided in section 2.5, upon the request of the Company, the Trustee shall establish and maintain a separate plan account in the name of each plan to reflect the investments in the trust fund or investment funds under this Trust of such plan.

4.3 Trust Valuations and Allocations. A "valuation date" shall be the date of the initial deposit by a plan hereunder, the last day of each calendar year ending after that date and any other date designated as such by the Company. The Trustee shall hold the trust fund as a commingled fund or commingled funds in which each separate plan shall be deemed to have a proportionate undivided interest in the fund or funds

in which it participates, except that each fund or asset identified by the Company as allocable to a particular plan account, herein referred to as an "identified fund" or "identified asset," and income, appreciation or depreciation and expenses attributable to a particular plan account or to an identified asset thereof, shall be allocated or charged to that plan account. Contributions shall be designated by the Company as allocable, and distributions shall be designated by the Company as chargeable, to a particular plan account and shall be so allocated or charged.As of each valuation date, upon the request of the Company, the Trustee shall determine the value of each plan account on such basis as the Trustee and the Company shall from time to time agree (considering the fair market value of the assets initially received from the predecessor Trustee or the Company with respect to the plan and subsequent contributions and distributions, net income, net appreciation or depreciation and expenses attributable to the plan) and shall render a statement thereof to the Company within 90 days after each valuation date. In addition, to the extent any eligible plan permits loans from the plan to participants, with respect to any loans granted, loan repayments collected by the plan administrator shall be forwarded to the Trustee. The amount of such loans shall be carried by the Trustee as an asset of the Trust equal to the combined unpaid principal balance of all participants. The Trustee shall rely conclusively upon the determination of the plan administrator or with respect to the amount of the combined unpaid principal balance of all participants. Loans to participants as provided in any eligible plan shall be granted and administered by the plan administrator. The Trustee shall have no responsibility (i) to ascertain whether a loan complies with the provisions of the applicable plan, (ii) for the

decision to grant a loan or (iii) for the collection and repayment of a loan.

ARTICLE 5

General Provisions

5.1 Qualification of the Plans and Trust. The plans and the trust taken together are intended to qualify under Section 401 of the Code and the trust is intended to qualify for tax exemption under Section 501(a) of the Code (or under any comparable provisions of any future legislation which amend or supersede said provisions of the Code). Unless and until advised to the contrary, the Trustee, any investment managers and all other persons dealing with the Trustee and any investment manager shall be entitled to assume that the plans and the Trust are so qualified and tax exempt.

5.2 Restrictions on Reversion. Except to the extent permitted by a plan, the Company shall have no right, title or interest in the assets of the trust fund, nor will any part of the assets of the trust fund revert or be repaid to the Company.

5.3 Nonalienation of Plan Benefits. The rights or interests of any plan participant or any plan participant's beneficiaries to any benefits or future payments hereunder shall not be subject to attachment or garnishment or other legal process by any creditor of any such plan participant or beneficiary, nor shall any such plan participant or beneficiary have any right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or rights which he or she may expect to receive (Contingently or otherwise) under a plan or this Trust, except in the case of charging amounts to distributions which are required

to be repaid to the Trust under outstanding participant loans and except as may be required by the tax withholding provisions of the Internal Revenue Code or of a state's income tax act or pursuant to a qualified domestic relations order (as defined in Section 414(p) of the Code).

5.4 Litigation. In any action or proceeding regarding this Trust, any plan benefits or the administration of a plan, employees or former employees of the Company, their beneficiaries and any other persons having or claiming to have an interest in this Trust or a plan shall not be necessary parties and shall not be entitled to any notice of process. Any final judgment which is not appealed or appealable and which may be entered in any such action or proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have any interest in this Trust or the plans. To the extent permitted by law, if a legal action is begun against the plan administrator, the Company or the Trustee by or on behalf of any person and such action results adversely to such person, or if a legal action arises because of conflicting claims to a plan participant's or other person's benefits, the costs to the Company, the plan administrator or the Trustee of defending the action will be charged to the sums, if any, which were involved in the action or were payable to the plan participant or other person concerned. Acceptance of participation in a plan shall constitute a release of the Company, the plan administrator, the Trustee and their agents from any and all liability and obligation not involving willful misconduct or gross neglect to the extent permitted by applicable law.

5.5 Trustee's Action Conclusive. Except as otherwise provided by law, the Trustee's exercise or non-exercise of its powers and discretions in good faith shall be

conclusive on all persons. No one shall be obliged to see to the application of any money paid or property delivered to the Trustee, except to the extent such person is acting as an investment manager as respects such money or property. The certificate of the Trustee that it is acting according to this agreement will fully protect all persons dealing with the Trustee. If there is a disagreement between the Trustee and anyone as to any act or transaction reported in any accounting, the Trustee shall have the right to a settlement of its account by any proper court.

5.6 Benefit Payments. The plan administrator may direct the Trustee as respects the distribution of benefits payable under a plan or, in lieu thereof, the plan administrator may assume the responsibility for distributing such benefits by advance written notice filed with the Trustee. If the plan administrator assumes such responsibility, the plan administrator shall open a commercial banking account in any insured banking institution, including the bank acting as Trustee, provided that such account shall be established in the name of the trust fund and shall be maintained as a part of the trust fund for the exclusive purpose of making benefit payments in accordance with the plan. The plan administrator shall be authorized to sign, manually or by facsimile signature, any and all checks, drafts and orders, including orders for direction in informal or formal letter form, against any funds in such checking account. In addition, the Company shall forward from time to time to the Trustee a list and specimen signatures of additional individuals who are authorized to sign manually such checks, drafts and orders. Such banking institution is authorized to honor any and all drafts, checks and orders so signed if the signatures thereon resemble the signatures duly filed with such banking institution,

including those drawn to the individual order of the plan administrator, without further inquiry with respect to the plan administrator's authority or use of the checks, drafts or orders, or the proceeds thereof, or to determine whether such checks, drafts or orders are in accordance with the plan. The Trustee shall make such deposits from the assets of the trust fund to any such checking account as are directed in writing from time to time by the plan administrator. The Trustee shall have no duty to question the propriety of any direction or accounting of funds retained in or disbursed by or on behalf of the plan administrator, but until so disbursed these funds shall be held in trust for the purpose of making benefit payments. Upon the agreement of the Trustee,the Trustee will prepare any information returns for tax purposes as to distributions made by or on behalf of the plan administrator.

5.7 Missing Persons. If any payment directed to be made by the Trustee from the trust fund is not claimed by the person entitled thereto, the Trustee shall notify the plan administrator of that fact. None of the Company, the Trustee nor the plan administrator shall have any obligation to search for or ascertain the whereabouts of any payee of benefits of the trust fund.

5.8 Liabilities Mutually Exclusive. To the extent permitted by law, the Trustee, the Company, the plan administrators of the plans and the investment managers shall be responsible only for its or their own acts or omissions.

5.9 Indemnification. To the extent permitted by law, no person (including the Trustee, any former Trustee, any present or former plan administrator, and any present or former director, officer or employee of the Company) shall be personally liable for any act done

or omitted to be done in good faith in the administration of the plans or this Trust or the investment of the trust fund. To the extent permitted by law, each present or former director, officer or employee of the Company to whom the plan administrator or the Company has delegated any portion of its responsibilities under the plans, each present or former Trustee and each present or former plan administrator shall be indemnified and saved harmless by the Company (to the extent not indemnified or saved harmless under any liability insurance or other indemnification arrangement with respect to the plans or this Trust) from and against any and all claims of liability to which they are subjected by reason of any act done or omitted to be done in good faith in connection with the administration of the plans or this Trust or the investment of the trust fund, including all expenses reasonably incurred in their defense if the Company fails to provide such defense; provided, however, that each present or former Trustee shall be indemnified and saved harmless only with respect to claims of liability to which such Trustee is subjected by reason of its compliance with any directions given in accordance with the provisions of this Trust by an investment manager, the Company, the plan administrator, plan participants, or any person duly authorized by any of the foregoing, or by its failure to act in the absence of such directions. Notwithstanding the foregoing, no former or present Trustee shall be indemnified or saved harmless as aforesaid in the event that such Trustee participated knowingly in, or knowingly undertook to conceal, an act or omission of any of the aforesaid persons or entities constituting a breach of such person's or entity's fiduciary responsibility hereunder, knowing such act or omission was a breach; provided, however, that no present or former

Trustee shall be deemed to have "participated" in a breach for the purposes of this undertaking solely as a result of the performance by such Trustee or its officers, employees or agents of any custodial, reporting, recording, and bookkeeping functions with respect to any assets of the trust fund or solely as a result of settling purchase and sale transactions entered into or directed by any of the aforesaid persons or entities or to have "knowledge" of any such breach solely as a result of the information received by such Trustee or its officers, employees or agents in the normal course in performing such functions or settling such transactions.

5.10 Compensation and Expenses. All reasonable compensation, costs, charges and expenses incurred in the administration of the plans and this Trust, as agreed upon between the Company and the Trustee, an investment manager, custodian, insurance company, and any agent, expert, counsel or other person, will, to the extent not paid by the Company, be paid from the trust fund; provided that expenses incurred in connection with the sale, investment and reinvestment of the trust fund (such as brokerage, postage, express and insurance charges and transfer taxes) shall be paid from the trust fund.

5.11 Action by the Company. Any action required or permitted of the Company under this Trust shall be by resolution of its Board of Directors, by a duly authorized committee of its Board of Directors, or by a person or persons authorized by resolution of its Board of Directors or such committee.

5.12 Warranty. The Company warrants that all directions or authorizations by a plan administrator whether for the payment of money or otherwise, will comply with the plans and this Trust.

5.13 Evidence. Evidence required of anyone under this agreement shall be signed, made or presented by the proper party or parties and may be by certificate, affidavit, document or other information which the person acting on it considers pertinent and reliable.

5.14 Waiver of Notice. Any notice required under this agreement may be waived by the person entitled to such notice.

5.15 Counterparts. This agreement may be executed in two or more counterparts, any one of which will be an original without reference to the others.

5.16 Gender and Number. Words denoting the masculine gender shall include the feminine and neuter genders and the singular shall include the plural and the plural shall include the singular wherever required by the context.

5.17 Successors. The plans and this Trust will be binding on all persons entitled to benefits hereunder and their respective heirs and legal representatives, and on the plan administrators, the Trustee and their successors. If, with the Company's consent, a successor to the Company or a purchaser of all or substantially all of the Company assets agrees to continue all of the plans invested hereunder, the term "Company" as used in the plans and this agreement shall include such successor or purchaser.

5.18 Severability. If any provision of a plan or this agreement is held to be illegal or invalid, such illegality or invalidity shall not affect the remaining provisions of the plan and this agreement, and they shall be construed and enforced as if such illegal or invalid provisions had never been inserted therein.

5.19 Statutory References. Any references in a plan or this agreement to a Section of the Code or of the Employee Retirement Income Security Act of 1974, as amended, shall include any comparable section or sections of any future legislation which amends, supplements or supersedes said Section.

5.20 Applicable Law. The plans and the trust shall be construed in accordance with the provisions of the Employee Retirement Income Security Act of 1974, as amended, and other applicable federal law and, to the extent not inconsistent with such laws, with the laws of the State of Illinois.

ARTICLE 6

Resignation or Removal of Trustee

6.1 Resignation or Removal of Trustee. A Trustee may resign at any time by giving thirty days' prior written notice to the Company, and the Company may remove a Trustee by giving thirty days' prior written notice to the Trustee. The Company shall notify the investment managers and plan administrators of any changes in Trustee.

6.2 Successor Trustee. In the event of the resignation or removal of a Trustee, a successor Trustee shall be appointed by the Company as soon as practicable. Notice of any such appointment shall be given by the Company to the retiring Trustee and the successor Trustee.

6.3 Duties of Retiring and Successor Trustees. In the event of the resignation or removal of a Trustee, the retiring Trustee shall promptly furnish to the successor Trustee and the Company a final account of its administration of the Trust. A successor Trustee shall succeed to the right and title of the predecessor

Trustee in the assets of the trust fund and the retiring Trustee shall deliver the property comprising the trust fund to the successor Trustee together with any instruments of transfer, conveyance, assignment and further assurance as the successor Trustee may reasonably require. Each successor Trustee shall have all the powers conferred by this agreement as if originally named Trustee. To the extent permitted by law, no successor Trustee shall be personally liable for any act or failure to act of a predecessor Trustee.

ARTICLE 7

Amendment and Termination

7.1 Amendment. This Trust may be amended from time to time by the Company; provided that the duties and liabilities of the Trustee or the plan administrator of a participating plan cannot be changed substantially without its consent; and provided further that, except as permitted in accordance with the provisions of section 5.2, under no condition shall an amendment result in the return or the repayment to the Company of any part of the trust fund or the income from it or result in the distribution of the trust fund for the benefit of anyone other than persons entitled to benefits under the plans.

7.2 Termination. If a plan is terminated, this Trust and all the rights, titles, powers, duties, discretions and immunities imposed on or reserved to the Trustee, the Company, any investment managers, participants and the plan administrator shall continue in effect with respect to the plan until all assets of the plan have been distributed by the Trustee as directed by the plan administrator under the plan.

IN WITNESS WHEREOF, the Company and the Trustee have caused this agreement to be signed by

their respective duly authorized representatives, and have caused their respective seals to be hereunto affixed, as of the day and year first above written.

EVANGELICAL HEALTH SYSTEMS CORPORATION

By /s/ [Illegible]
Its Senior Vice President
Human Resources
and Administration

ATTEST:

/s/ [Illegible]
Its Secretary
Seal

THE NORTHERN TRUST COMPANY as Trustee

By /s/ [Illegible]
Its Vice President

ATTEST:

/s/ [Illegible]
Its Assistant Secretary
Seal

APPENDIX A

EVANGELICAL HEALTH SYSTEMS CORPORATION MASTER PENSION TRUST

ELIGIBLE PLANS AS OF MARCH 1, 1993

Evangelical Health Systems Corporation Employees Pension Plan

FIRST AMENDMENT TO THE AGREEMENT BETWEEN EVANGELICAL HEALTH SYSTEMS CORPORATION AND THE NORTHERN TRUST COMPANY

THIS AGREEMENT is made this 10th day of February, 1998 by and between ADVOCATE HEALTH CARE NETWORK, successor of EVANGELICAL HEALTH SYSTEMS CORPORATION (the "Company"), and THE NORTHERN TRUST COMPANY, an Illinois corporation (hereinafter referred to as "Trustee");

WHEREAS, the Company and the Trustee entered into a trust agreement effective June 1, 1982 (hereinafter referred to as the "Trust"); and

WHEREAS, the Company and the Trustee desire to amend the Trust pursuant to Section 7.1 effective January 1, 1997;

NOW, THEREFORE, the sections of the Trust set forth below are amended as follows, but all other sections of the Trust shall remain in full force and effect.

1. The first recital is hereby amended by inserting "or its affiliates" after "Company" in the first line.

2. The second recital is hereby amended by inserting "or its affiliates" after "Company" in the second

line; the second recital is further amended by substituting "their" for "its" in the second line.

3. Section 1.2 is hereby amended by inserting "its affiliate as plan sponsor," between "the Company," and "the Trustee" in the second line.

4. Section 2.3 is hereby amended by inserting "or its affiliates" between "the Company," and "shall, from time to time" in the first sentence; Section 2.3 is further amended by inserting "or its affiliates" between "received from the Company" and "(including those" in the second sentence; Section 2.3 is further amended by inserting "or its affiliate" between "from the Company" and "or otherwise see" in the second sentence.

5. Section 2.7 is hereby amended by inserting "or its affiliates" between "former employees of the Company" and "covered by a plan" in the second sentence; Section 2.7 is further amended by inserting "or the relevant affiliate" between "employees of the Company" and "and all other persons" in the fourth sentence.

6. Section 4.1 is hereby amended by inserting "or its affiliates" between "assumed by the Company" and "which meets the requirements" in the first sentence.

7. Section 5.2 is hereby amended by inserting "or its affiliates" after "Company" wherever it appears.

8. Section 5.4 is hereby amended by inserting "or its affiliates" between "employees of the Company" and, "their beneficiaries" in the first sentence; Section 5.4 is further amended by inserting", its affiliate" between "the Company" and "or the Trustee by or on behalf' in the third sentence; Section 5.4 is further amended by inserting "its affiliate," between "the Company," and "the plan administrator or the Trustee" in the third sentence.

9. Section 5.8 is hereby amended by inserting "its affiliates," between "the Company," and "the plan administrators of the plans".

10. Section 5.9 is hereby amended by inserting "or its affiliates" after "employee of the Company" in the first parenthetical phrase; Section 5.9 is further amended by inserting "or its affiliate" between "the Company" and "to whom the plan administrator" in the eighth line.

11. Section 7.1 is hereby amended by inserting "or its affiliates" between "repayment to the Company" and "of any part of the trust fund" in the seventh line.

12. Appendix A is hereby amended in the form attached.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Amendment to be executed and their respective corporate seals to be affixed and attested by their respective officers on the day and year first written above.

ADVOCATE HEALTH CARE NETWORK

ADVOCATE HEALTH CARE NETWORK

By: /s/ [Illegible]

Its: Sr. Vice President, Finance and Treasurer

ATTEST: /s/ [Illegible]
Its: Secretary

THE NORTHERN TRUST COMPANY

By: /s/ [Illegible]

Its: Vice President

ATTEST: /s/ [Illegible]
Its Assistant Secretary

APPENDIX A

EVANGELICAL HEALTH SYSTEMS CORPORATION MASTER PENSION TRUST

ELIGIBLE PLANS AS OF JANUARY 1, 1997

1. Evangelical Health Systems Corporation Employees Pension Plan

2. Lutheran General Health System Basic Retirement Plan

FIRST AMENDMENT TO THE AGREEMENT BETWEEN EVANGELICAL HEALTH SYSTEMS CORPORATION AND THE NORTHERN TRUST COMPANY

THIS AGREEMENT is made this 10th day of February, 1998 by and between ADVOCATE HEALTH CARE NETWORK, successor of EVANGELICAL HEALTH SYSTEMS CORPORATION (the "Company"), and THE NORTHERN TRUST COMPANY, an Illinois corporation (hereinafter referred to as "Trustee");

WHEREAS, the Company and the Trustee entered into a trust agreement effective June 1, 1982 (hereinafter referred to as the "Trust"); and

WHEREAS, the Company and the Trustee desire to amend the Trust pursuant to Section 7.1 effective January 1, 1997;

NOW, THEREFORE, the sections of the Trust set forth below are amended as follows, but all other sections of the Trust shall remain in full force and effect.

1. The first recital is hereby amended by inserting "or its affiliates" after "Company" in the first line.

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second line; the second recital is further amended by substituting "their" for "its" in the second line.

3. Section 1.2 is hereby amended by inserting "its affiliate as plan sponsor," between "the Company," and "the Trustee" in the second line.

4. Section 2.3 is hereby amended by inserting "or its affiliates" between "the Company," and "shall, from time to time" in the first sentence; Section 2.3 is further amended by inserting "or its affiliates" between "received from the Company" and "(including those" in the second sentence; Section 2.3 is further amended by inserting "or its affiliate" between "from the Company" and "or otherwise see" in the second sentence.

5. Section 2.7 is hereby amended by inserting "or its affiliates" between "former employees of the Company" and "covered by a plan" in the second sentence; Section 2.7 is further amended by inserting "or the relevant affiliate" between "employees of the Company" and "and all other persons" in the fourth sentence.

6. Section 4.1 is hereby amended by inserting "or its affiliates" between "assumed by the Company" and "which meets the requirements" in the first sentence.

7. Section 5.2 is hereby amended by inserting "or its affiliates" after "Company" wherever it appears.

8. Section 5.4 is hereby amended by inserting "or its affiliates" between "employees of the Company" and ", their beneficiaries" in the first sentence; Section 5.4 is further amended by inserting, "its affiliate" between "the Company" and "or the Trustee by or on behalf' in the third sentence; Section 5.4 is further amended by inserting "its affiliate," between "the

Company," and "the plan administrator or the Trustee" in the third sentence.

9. Section 5.8 is hereby amended by inserting "its affiliates," between "the Company," and "the plan administrators of the plans".

10. Section 5.9 is hereby amended by inserting "or its affiliates" after "employee of the Company" in the first parenthetical phrase; Section 5.9 is further amended by inserting "or its affiliate" between "the Company" and "to whom the plan administrator" in the eighth line.

11. Section 7.1 is hereby amended by inserting "or its affiliates" between "repayment to the Company" and "of any part of the trust fund" in the seventh line.

12. Appendix A. is hereby amended in the form attached.

IN WITNESS WHEREOF, the Company and the Trustee have caused this Amendment to be executed and their respective corporate seals to be affixed and attested by their respective officers on the day and year first written above.

ADVOCATE HEALTH CARE NETWORK

By: /s/ [Illegible]

Its: Sr. Vice President, Finance and Treasurer

ATTEST: /s/ [Illegible]
Its: Secretary

THE NORTHERN TRUST COMPANY

By: /s/ [Illegible]

Its: Vice President

ATTEST: /s/ [Illegible]
Its Assistant Secretary

APPENDIX A

EVANGELICAL HEALTH SYSTEMS CORPORATION MASTER PENSION TRUST

ELIGIBLE PLANS AS OF JANUARY 1, 1997

1. Evangelical Health Systems Corporation Employees Pension Plan

2. Lutheran General Health System Basic Retirement Plan

Stenographic Transcript of Hearing Before
The Committee on Finance

UNITED STATES SENATE

EXECUTIVE SESSION

Washington, D.C.

June 12, 1980

Alderson Reporting Company, Inc
Official Reporter
300 Seventh St., S.W. Washington, D.C.

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[1] EXECUTIVE SESSION

THURSDAY, JUNE 12, 1980

United States Senate,
Committee on Finance,
Washington, D. C.

The committee convened at 10:05 a.m., in Room 2221, Dirksen Senate Office Building, the Hon. Herman Talmadge presiding.

Present: Senators Talmadge, Nelson, Bentsen, Moynihan, Matsunaga, Baucus, Boren, Bradley, Dole, Packwood, Heinz, Chafee, and Durenberger.

Senator Talmadge. The committee will please come to order. We have two back-to-back votes in the Senate at 12:00. That means for all practical purposes we will have to try to finish this bill by 12:00. I would suggest

that we follow the procedure of letting the staff proceed as they did on Tuesday, with the staff recommendations, and then vote on them, and then vote on any amendments that may be offered by members of the committee. Is that agreeable?

Senator Packwood. Mr. Chairman, that is agreeable if we can finish this by 12:00. I am going to Oregon this afternoon for some hearings on the damage to the Columbia River because of the Mt. St. Helens eruption. If there is a possibility. If we get to about eleven o'clock and it appears we might not make it, I

* * *

[39] over a private transit system, in the State of New Jersey. And the state will not accept the responsibility for the unfunded Pension payments. The private corporation that is selling it, says that they will. I just want to nail down that when the state takes over the stock of the company and the private company says they will continue to assume the liability for the unfunded pension, payments, that when they make those payments they will be able to get that tax deduction.

Senator Bentsen. Mr. Chairman, that certainly appears to be equitable.

Senator Talmadge. Any objection? Without objection it is agreed to. Now, Senator Packwood I believe had something.

Senator Packwood. My amendment relates to Senator Durenberger's presentation, and will wait until he comes back.

Senator Talmadge. All right. Now I have one. I will state it very briefly. This is cosponsored by Senator

Bentsen and Boren, working closely with representatives of 27 major church denominations from across the nation. I introduced this 1090 and its companion tax bill, S. 1091, to protect the viability of church retirement plans.

The problem that church plans face is one of definition. Under current law, both ERISA and the Internal Revenue Code, define such plans to include not only church plans covering church employees but also plans covering employees of church-affiliated organizations.

[40] For example, the church plan might cover the employees of a church-related hospital, university or retirement home. As you might expect, this is a common practice of many churches throughout the United States. However, unless we act to preserve the longstanding definition of church plans, the law as it currently reads will phase out this definition beginning in 1983.

S. 1090 and S. 1091 make the amendments necessary to continue the current church plan definition. The definition would also be expanded to include church plans which rather than being maintained directly by a church are instead maintained by a pension board maintained by a church.

In addition, the definition of the term "employee of a church" would be expanded to include a church minister in the exercise of his or her ministry regardless of the source of compensation, as well as certain former church plan participants.

The bills would also create a notice and correction procedure for the amendment of a church plan.

Senator Dole.

Senator Dole. I just want to say as a cosponsor I support everything you said.

Senator Talmadge. Any objection? Mr. Halperin of the Treasury Department.

Mr. Halperin. Mr. Chairman, we have objected to certain provisions of that bill, and let me just point out what we see [41] as the most serious concern.

What that bill would permit, it would exclude church agencies from the protection of ERISA, and that would mean that if somebody works for a hospital or a school that happens to be affiliated with a church it would be permissible for that plan to provide no retirement benefits unless they work until age 65, for example.

So it could deny benefits for people who might have 20 or 30 or even more years of service with the school or the hospital. Now maybe they don't want to go that far, and we have had conversations with these people for a number of years and we have always offered to talk about each particular provision of ERISA and find out which of them create problems for them because it certainly would be reasonable to modify some of them to deal with the particular problems of churches. But to say that the vesting provisions, the eligibility provisions do not apply across the board so that we can return to the situation where long-service employees get no pensions seems to us to be objectionable, Mr. Chairman.

Senator Talmadge. I think we have got a question of separation of church and state here, number one, gentlemen, and, number two, I don't believe we ought to get a row with every religious faith in the country – Jewish, Catholic, Protestant, and otherwise.

All in favor please say "aye"

[42] (A chorus of "ayes.")

Opposed, "no."

(No response.)

The "ayes" have it and the amendment is agreed to.

Senator Dole. Mr. Chairman?

Senator Talmadge. Senator Dole.

Senator Dole. I was going to propose, I don't see it in the staff recommendations, and that would be a sunset data on this legislation of June 30, 1983. I think what we are looking about we talked about sunset legislation in the general sense. I am not certain this legislation will answer all the concerns we have. It will force Congress to take another look at it, give us time to see how it works, and give us time to make any necessary changes. I might add that 1983 is a nonpolitical year.

We want to make certain that we provide income security to employees, but if employers cannot survive, then we are going to have a question of PBGC paying substantial benefits. This may require very high premiums or could even in some circumstances lead to going to the general revenues for funding.

I haven't discussed this amendment with the staff or with PBGC, but I think what we need to – Senator Talmadge. What date in 1983 do you suggest, Senator Dole?

Senator Dole. June 30.

* * *

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

No. 3:13-cv-02941

KAPLAN,

v.

SAINT PETER'S HEALTHCARE SYSTEM, ET AL.

RELEVANT DOCKET ENTRIES

DATE	NO.	DOCKET TEXT
05/07/2013	1	COMPLAINT against SUSAN BALLESTERO, JOHN AND JANE DOES 1-20, RONALD C. RAK, SAINT PETER'S HEALTHCARE SYSTEM, GARRICK STOLDT (Filing and Admin fee $ 400 receipt number 4995198), filed by LAURENCE KAPLAN. (Attachments: # 1 Civil Cover Sheet, # 2 Certification)(jjc) (Entered: 05/08/2013)
03/31/2014	67	ORDER denying 42 Motion to Dismiss; denying as moot 47 Motion to Strike. Signed by Judge Michael A. Shipp on 03/31/2014. (FH) (Entered: 03/31/2014)
03/31/2014	68	MEMORANDUM OPINION. Signed by Judge Michael A. Shipp on 03/31/2014. (FH) (Entered: 03/31/2014)

DATE	NO.	DOCKET TEXT
04/14/2014	73	ANSWER to Complaint by SUSAN BALLESTERO, RONALD C. RAK, SAINT PETER'S HEALTHCARE SYSTEM, GARRICK STOLDT. (GREENBAUM, JEFFREY) (Entered: 04/14/2014)
09/19/2014	110	MEMORANDUM OPINION filed. Signed by Judge Michael A. Shipp on 9/19/2014. (kas,) (Entered: 09/19/2014)
09/19/2014	111	ORDER GRANTING 74 Defendants' motion to certify the Court's March 31, 2014 Order for interlocutory appeal to the Third Circuit Court of Appeals; Defendants' motion to stay proceedings is GRANTED pending a decision by the Third Circuit Court of Appeals regarding Defendants' petition for an interlocutory appeal. Signed by Judge Michael A. Shipp on 9/19/2014. (kas,) (Entered: 09/19/2014)
12/12/2014	116	MEMORANDUM OPINION. Signed by Judge Michael A. Shipp on 12/12/2014. (jjc) (Entered: 12/12/2014)
01/07/2015	121	NOTICE OF APPEAL as to 111 Order on Motion for Leave to Appeal, by SUSAN BALLESTERO, RONALD C. RAK, SAINT PETER'S HEALTHCARE SYSTEM, GARRICK STOLDT. Filing fee $ 505, receipt

DATE	NO.	DOCKET TEXT
		number TRE051604. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (mmh) (Entered: 01/15/2015)
01/20/2015	125	USCA Case Number 151172 for 121 Notice of Appeal (USCA), filed by GARRICK STOLDT, SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, SUSAN BALLESTERO. USCA Case Manager Carmella
12/12/2016	153	ORDER Administratively Terminating and Staying Case pending the decision from the United States Supreme Court on Kaplan v. Saint Peter's Healthcare System; the parties shall notify the Court via e-filed correspondence within 7 days of the United States Supreme Court's decision. Signed by Judge Michael A. Shipp on 12/12/2016.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15-1172

KAPLAN,

v.

SAINT PETER'S HEALTHCARE SYSTEM, ET AL.

RELEVANT DOCKET ENTRIES

DATE	DOCKET TEXT
01/20/2015	CIVIL CASE DOCKETED. Appeal from grant of Permision to Appeal pursuant to 28 U.S.C. Section1292(b) filed by Saint Peter's HealthCare, Susan Ballestero, Ronald C. Rak, Saint Peter's Healthcare System and Garrick Stoldt
03/16/2015	ELECTRONIC BRIEF with Addendum and Volume I of Appendix attached on behalf of Appellants Susan Ballestero, Ronald C. Rak, Saint Peter's Healthcare System and Garrick Stoldt, filed. Certificate of Service dated 03/16/2015 by US mail, ECF.
03/16/2015	ELECTRONIC APPENDIX on behalf of Appellants Susan Ballestero, Ronald C. Rak, Saint Peter's Healthcare System and Garrick Stoldt, filed. Certificate of service dated 03/16/2015 by ECF, US mail.

DATE	DOCKET TEXT
05/4/2015	ELECTRONIC BRIEF with Supplemental Appendix/Addendum attached on behalf of Appellee Laurence Kaplan.
06/4/2015	REPLY BRIEF on behalf of Appellants Susan Ballestero, Ronald C. Rak, Saint Peter's Healthcare System and Garrick Stoldt.
10/8/2015	ARGUED on Thursday, October 8, 2015. Panel: McKEE, Chief Judge, AMBRO and HARDIMAN, Circuit Judges. Jeffrey J. Greenbaum arguing for Appellants Ronald C. Rak and Saint Peter's Healthcare System; Karen L. Handorf arguing for Appellee Laurence Kaplan.
12/29/2015	PRECEDENTIAL OPINION Coram: MCKEE, Chief Judge, AMBRO and HARDIMAN, Circuit Judges. Total Pages: 27. Judge: AMBRO Authoring.
12/29/2015	JUDGMENT, ORDERED and ADJDUGED by this Court that the judgment of the District Court dated march 31, 2014, is hereby affirmed. Costs taxed against Appellants. All of the above in accordance with the opinion of this Court.
1/12/2016	PETITION filed by Appellants Susan Ballestero, Ronald C. Rak, Saint Peter's Healthcare System and Garrick Stoldt for Rehearing before original panel and the court en banc.

DATE	DOCKET TEXT
3/18/2016	ORDER (MCKEE, Chief Judge, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY JR., VANASKIE, SHWARTZ and KRAUSE, Circuit Judges) denying Petition for Panel and En Banc Rehearing filed by Appellants Saint Peter's Healthcare System, Ronald C. Rak, Susan Ballestero and Garrick Stold.
3/28/2016	MANDATE ISSUED.

AMENDED AND RESTATED BYLAWS OF SAINT PETER'S HEALTHCARE SYSTEM, INC.

(Formerly Catholic Health New Jersey, Inc.)

ARTICLE I

Name, Mission and Philosophy, and Purposes

Section 1. Name. The name of this corporation shall be Saint Peter's Healthcare System, Inc. (the "Corporation"). Unless otherwise specifically indicated, for purposes of these Bylaws, the "Corporation" shall only refer to this Corporation and shall not include any subsidiaries of the Corporation, regardless of the consolidation of such subsidiaries in the financial statements of the Corporation.

Section 2. Mission and Philosophy.

(a) The basic Mission of the Corporation and of all its subsidiaries is to continue the healing ministry of Jesus Christ as expressed in the Gospel. This mission shall be in support of and further the mission of the Catholic Church, specifically in the Diocese of Metuchen as expressed in the Mission Statement of the Diocese of Metuchen. The Corporation and all its subsidiaries shall foster the values of love, compassion, justice, and reverence for human life.

(b) The Corporation shall perform its general and specific corporate purposes in conformity with the law, teachings and moral practices of the Roman Catholic Church and in accord with the tenets set forth in the latest edition of the directives entitled "Ethical and Religious Directives for Catholic Health Care Facilities" approved by the National Conference of Catholic Bishops, and as promulgated by the Bishop of Metuchen for use in his Diocese.

(c) In recognition of the principle of human equality, all admissions to facilities owned or controlled by the Corporation and the employment practices of the Corporation shall reflect complete impartiality with reference to sex, race, color, creed, or national origin.

* * *

Jersey, as the Board of Governors of the Corporation (the "Board of Governors") may designate.

Section 2. Registered Office; Registered Agent. The registered office of the Corporation shall be 254 Easton Avenue, New Brunswick, New Jersey 08903. The registered agent at that address shall be appointed from time to time by the Member.

ARTICLE III
Member

Section 1. Designation of Member. The Bishop of the Diocese of Metuchen (the "Member") shall be, *ex officio*, the sole member of the Corporation and shall be responsible for ensuring the compliance of the Corporation and its subsidiaries with the "Ethical and Religious Directives for Catholic Health Care Facilities." The Member shall have the powers set forth in these Bylaws. In the event of a vacancy in the office of the Bishop of the Diocese of Metuchen, by retirement, death, disability or otherwise, the powers of the Member shall vest in the individual appointed by the Roman Catholic Church to assume the powers of that office until such time as a successor Bishop is appointed, and such individual shall act as the Member until such time as a successor Bishop is appointed.

Section 2. Powers of Member.

(a) The Member shall have the power to remove any or all of the Governors of the Corporation and the Trustees of the Corporation's subsidiaries, in its sole discretion, with or without cause, at any time.

(b) The Member shall have the power to appoint and remove the Chair of the Board (the "Chair"), the Vice-Chair of the Board (the "Vice-Chair"), the President and Chief Executive Officer of the Corporation, the Treasurer of the Corporation, the Secretary of the Corporation and the Assistant Secretary of the Corporation, in its sole discretion, with or without cause, at any time.

(c) The Member shall have the power to appoint and remove the Executive Director of each of the Corporation's subsidiaries, in its sole discretion, with or without cause, at any time.

(d) The Member shall have the power to exercise the power of the Corporation with respect to any of the Corporation's subsidiaries.

(e) The Member shall have the power to veto any action by the Corporation or the Corporation's Board of Governors.

ARTICLE IV
Board of Governors

Section 1. Management.

(a) Except as otherwise set forth herein, all powers of the Corporation shall be exercised by and under the authority of the Board of Governors (the "Board"), and the property, business and affairs of the Corporation shall be managed under the direction of the Board. The Board is the governing body of the Corporation with duties and responsibilities

that include oversight of the clinical, financial and patient satisfaction performance of the Corporation and its subsidiaries, compared to appropriate industry benchmarks, providing resources to ensure the delivery and maintaining of quality patient care, the charge, control and management of the property, business, affairs and financial management of the Corporation and its subsidiaries, the establishment of policy, promotion of performance improvement, quality review and utilization management processes, risk management/safety, medical staff credentialing, and the provision of organizational management and planning of the subsidiaries, as appropriate. The Board shall also provide coordination and integration among the Corporation's leaders and the subsidiaries' leaders to establish policy, maintain quality care and patient safety, provide for necessary resources, and provide for organizational management and plans. The Board shall be responsible for oversight of services performed in the Hospital and in outpatient and/or ambulatory facilities operated by any subsidiaries. Subject to the powers of the Corporate Member and the Bishop as set forth herein, the Board may make such rules for its own regulation, determine the policies of the Corporation and its subsidiaries and perform all duties necessary for the transaction of the affairs of the Corporation. Subject to the powers of the Corporate Member and the Bishop as set forth herein, the Board shall ensure that the subsidiaries provide all care, treatment, and services in accordance with applicable licensure requirements, law, rules, and regulations and, in furtherance thereof may, at any time or from time to time, promulgate administrative rules and regulations (including provision for the enforcement thereof) which it

deems necessary or appropriate to ensure compliance with law, financial integrity, or the proper functioning of the Corporation.

(b) The Board shall also institute procedures to provide for:

(1) orientation of newly elected Board members to Board functions and procedures;

(2) periodic re-examination of the Board's performance;

(3) a program of continuing education to be made available to all members of the Board;

(4) the authority and responsibility of each level of the organization with respect to quality of care; risk management functions; credentials review and privilege delineation; professional graduate education; planning for services; and the development and approval of the budget;

(5) annual evaluation of the Corporation and its subsidiaries performance in relation to its vision, mission, and goals; and

(6) the setting of expectations, plans, and the management of processes to measure, assess and improve the Corporation and its subsidiaries governance, management, clinical and support activities.

(c) Notwithstanding anything to the contrary in these Bylaws, the Board shall not take any of the following actions without the approval of the Member:

(1) the sale, lease or exchange of all or substantially all the property or assets of the Corporation;

(2) merger or consolidation of the Corporation with any other corporation;

(3) dissolution of the Corporation and distribution of its assets pursuant thereto; and

(4) any other matter that by law, the Certificate of Incorporation or these Bylaws requires the approval of the Member.

Section 2. Number, Term, and Election of Governors. The Board of Governors shall consist of (i) not more than twenty (20) Governors, appointed by the Member, including the Chair and the Vice Chair; (ii) the President and Chief Executive Officer of the Corporation, who shall serve *ex officio*, with vote; (iii) the Episcopal Vicar for the Healthcare Apostolate of the Diocese of Metuchen (the "Member's Representative"), who shall serve *ex officio*, with vote; and (iv) the current and immediate past president of the medical staff who shall serve *ex officio* with vote. The exact number of Governors shall be the number fixed from time to time by the Member. Each year at the Annual Meeting of the Board, the Board shall, subject to the approval of the Member, elect or re-elect the non-*ex officio* Governors to serve as Governors as needed to replace or extend the terms of Governors whose terms are expiring or as deemed appropriate by the Board in accordance with these Bylaws. Non-*ex officio* Governors shall be appointed for one (1), two (2), or three (3) year terms at the Annual Meeting of the Board and shall serve until their successors are elected by the Board. Except as otherwise authorized by the Member, non-*ex officio* Governors who have served for nine (9) successive years shall observe a lapse of one (1) year before being eligible for reelection. Notwithstanding anything to the contrary herein, the Member's Representative has no specific term but

shall serve at the pleasure of the Bishop. Thus, in the event of a vacancy in the office of the Member, by retirement, death, disability or otherwise, the Member's Representative shall no longer serve on the Board or any of the Committees of the Board. Members of the Board serving by virtue of their position as president or past president of the Medical Staff shall hold office for a term concurrent with such Medical Staff officer's term of Medical Staff Office.

Section 3. Qualifications of the Governors.

(a) Governors shall be elected for their ability to participate effectively in fulfilling the responsibilities of the Board. In order to be eligible for Governorship, the person so nominated shall agree to conduct the activities and business of the Corporation under the purview of and in accord with Roman Catholic philosophy and the Ethical and Religious Directives for Catholic Health Facilities as adopted by the National Conference of Catholic Bishops and the United States Catholic Conference and implemented by the Bishop. This shall include, but not be limited to, the belief in the right to life and the inviolability of the human person and the unqualified opposition to abortion.

(b) The principal qualifications of a Governor shall be commitment to community health and welfare, and an open-mindedness about necessary internal and external changes for the Corporation. A Governor shall possess, *inter alia*, the qualities of honesty, integrity, a sense of justice and a sound moral character. The Board may, from time to time, identify such further qualifications for Governorship as they deem appropriate.

(c) Each newly appointed Governor shall be required to acknowledge in writing his agreement to manage the business and affairs of the Corporation pursuant to the Certificate of Incorporation and the Bylaws of the Corporation.

Section 4. Honorary Governors. The Board may from time to time elect certain individuals to be Honorary Governors in recognition of meritorious or faithful service to the Corporation or its subsidiaries or in recognition of distinguished achievement. Honorary Governors may attend meetings of the Board on invitation by the Board, but shall not vote or be counted towards a quorum, nor shall they have any other rights associated with Board membership.

Section 5. Regular and Annual Meetings. Regular meetings of the Board shall be held not less often than quarterly at the principal place of business of the Corporation or such other place and time as shall be designated by the Chair. The Annual Meeting shall be held in January at the principal place of business of the Corporation or other convenient location and on such date and time as designated by the Chair. The Annual Meeting shall be the meeting of the Board of this Corporation at which the Board shall consider the budget of the Corporation and any other matters as may be brought to the attention of the Board by the Member. Business to be transacted at any regular meeting of the Board shall not be limited to those matters set forth in the notice of meeting.

Section 6. Special Meetings. Special meetings of the Board may be called at any time by the Member, the Chair, the President and Chief Executive Officer, or upon receipt of the written request of any four (4) or more Governors. The business to be transacted at any special meeting shall be limited to those items of

business set forth in this notice of the meeting. Written notice of any special meeting, together with a proposed agenda, shall be sent at least forty-eight (48) hours prior thereto to each Governor.

Section 7. Notice of Board Meetings. Governors shall be given written notice of each meeting of the Board and such notice shall set forth the time and place of the meeting and notice of the matters of business to be transacted. Such notice shall be signed by the Secretary, or the Secretary's designee, and delivered to each Governor either personally or by mail, via facsimile, or electronic mail to his residence or place of business as listed in the President and Chief Executive Officer's office not less than one business day prior to such meeting.

Section 8. Waiver of Notice. Whenever any notice whatsoever is required to be given to any Governor under these Bylaws or by law, a waiver thereof in writing, signed at any time, whether before or after the time of the meeting, by the Governor entitled to such notice, shall be deemed equivalent to the giving of such notice. The attendance of a Governor at a meeting shall constitute a waiver of notice of such meeting, except where a Governor attends a meeting and objects thereat to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular meeting or special meeting of the Board, other than a proposed agenda, need be specified in the notice or waiver of notice of such meeting unless specifically required by law or these Bylaws.

Section 9. Voting. Except as otherwise permitted or required by these Bylaws, a vote of a majority of the Governors and the Chair, or his designee, at any

meeting at which a quorum is present shall be required for approval of any issue that may properly come before the Board of Governors. Unless the Chair determines otherwise, the Vice-Chair of the Board shall be the Chair's designee in the Chair's absence. Proxy voting shall not be permitted.

Section 10. Quorum. A majority of the Governors which includes the Chair or his/her designee shall constitute a quorum for the transaction of business. The Chair or his/her designee must be present to constitute a quorum. Unless the Chair determines otherwise, the President and Chief Executive Officer shall be the Chair's designee in the Chair's absence. In addition to those Governors who are actually present at a meeting, Governors shall be deemed as present at such meeting if a telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time is used. The act of a majority of the Governors which includes the Chair or his/her designee, present and voting at a meeting at which a quorum is present, shall be the act of the Board.

Section 11. Compensation; Reimbursement for Expenses Incurred by Governors. No Governor shall receive compensation for serving as such. A Governor may be reimbursed for any monetary expenses incurred by said Governor arising out of or during the course of the faithful discharge of his or her duties as a Governor. Payment shall be made upon receipt of a verified voucher submitted to the President and Chief Executive Officer and approved by the Chair.

Section 12. Action by Governors Without Meeting. Upon direction of the Chair or his/her designee, any action required or permitted to be taken at a meeting of the Board or a Board committee may be taken

without a meeting upon the written consent of two-thirds (2/3) of the Governors of the Board or of such committee, as applicable. The written consents of the Governors consenting thereto shall be filed with the minutes of the Board or Board committee, as the case may be.

ARTICLE V
Committees of the Board

Section 1. General. The Board may delegate such of its powers as it considers advisable, except those powers which by law, the Certificate of Incorporation, or these Bylaws may not be so delegated, to such committees as the Board, or these Bylaws, may from time to time establish. All committees shall serve at the pleasure of the Board. The Chair shall appoint the members and the chairs of such standing committees of the Board as are provided for in these Bylaws. Unless otherwise specified, committee members may include persons other than Board members who shall serve in an advisory capacity to the voting members. In addition, the Chair may also appoint the members and chairpersons of such special committees as the Board or the Chair may establish. The Chair and the President and Chief Executive Officer shall be members of all committees *ex officio*, but without vote unless specifically named as a member of a particular committee, and the Corporation or its affiliates or members of the Medical/Dental Staff of the Hospital and who are from the community served by the Corporation.

* * *

(b) Duties.

The Marketing Committee shall:

(1) Review the Corporation's marketing plans and advertising strategies and advise on areas of emphasis for the advertising budget;

(2) Monitor the Corporation's public image and brand strength;

(3) Review and assess the effectiveness of the advertising efforts and expenditures for each completed fiscal year;

(4) Review and monitor the Corporation's service lines and new service development;

(5) Make recommendations to management on appropriate and effective communications, marketing messages, and public relations; and

(6) Perform any and all other functions and take any and all other actions as may be directed by the Board from time to time.

Section 13. Retirement Plan Committee.

(a) Composition.

The Retirement Plan Committee shall consist of the Chair, who shall serve *ex officio* with vote, the Corporation's Chief Financial Officer and the Corporation's Vice President for Human Resources, each of whom shall serve *ex officio* without vote, and not more than seven (7) additional Governors. The Committee may also include additional persons elected by the Board, who need not be Governors, who are employees of the Corporation or its affiliates or members of the Medical/Dental Staff of the Hospital and who are from the community served by the Corporation.

(b) Duties.

The Retirement Plan Committee shall:

(1) Possess overall responsibility for the oversight of the retirement plans sponsored by the Corporation;

(2) Oversee the management of plan assets relating to the defined benefits pension and other retirement and savings plans maintained by the Corporation;

(3) Review the Corporation's policy for funding its retirement plans;

(4) Receive and review periodic reports on the administration and operation of the Corporation's retirement plans to ensure the achievement of their intended purposes;

(5) Act on behalf of the Board with respect to the appointment and termination of Governors, third party administrators, investment managers, named fiduciaries or other positions relating to the retirement plans;

(6) Approve on behalf of the Board any amendment to the Corporation's retirement plans or do any other task with respect to the retirement plans that requires action by the Board;

(7) Receive periodic briefings regarding compliance with funding and other regulatory requirements, including the Employee Retirement Income Security Act of 1974, as amended;

(8) Review periodically the performance of any third parties engaged in the administration, management or investment of funds of any Corporation retirement plan, and to review the recommendations of management with respect to the engagement or termination of any third parties; and

(9) Perform any and all other functions and take any and all other actions as may be directed by the Board from time to time.

Section 14. Compensation Committee.

(a) Composition.

The Compensation Committee shall consist of the Chair, who shall serve *ex officio* with vote, and at least two (2) additional Governors, but not more than five (5). The Committee may also include additional persons elected by the Board, who need not be Governors, and who are from the community served by the Corporation.

(b) Duties.

The Compensation Committee shall:

(1) Establish goals, objectives and performance standards for executive officers of the Corporation and its subsidiaries;

(2) Review and recommend to the Board the compensation (including base salary, incentive compensation and other benefits) of the Chief Executive Officer, considering the performance by the Chief Executive Officer relative to goals, objectives and performance standards set by the Compensation Committee;

(3) Review and recommend to the Board the compensation (including base salary, incentive compensation and other benefits) of each other executive officer, including but not limited to the Chief Operating Officer and all Vice-Presidents (but not those executive officers whose compensation is set by the Chief Executive Officer or otherwise), considering the performance by each

executive officer relative to applicable goals and objectives set by the Compensation Committee;

(4) Recommend to the Board for approval a determination of those officers whose compensation will be set by the Chief Executive Officer or other executive officers. Review and evaluate the compensation of those officers of the Corporation whose compensation is not set by the Board;

(5) Review and recommend to the Board for approval management incentive plans and other executive compensation plans. Recommend to the Board any necessary or desirable changes to such plans;

(6) Assure that the Corporation's compensation practices are in compliance with applicable laws and regulations;

(7) Retain such advisors, including independent counsel and/or compensation experts, as it may deem advisable; and

(8) Perform any and all other functions and take any and all other actions as may be directed by the Board from time to time.

Section 15. Pastoral Care Committee.

(a) Composition.

The Pastoral Care Committee shall consist of the Chair, who shall serve *ex officio* with vote, the Member's Representative who shall serve *ex officio* with vote, and not more than five (5) additional Governors.

(b) Duties.

The Pastoral Care Committee shall

(1) Establish goals and objectives and provide guidance to the Pastoral Care Department of the Corporation in order to foster and address the varied spiritual needs of patients, employees, health care professionals and other members of the Corporation's communities;

(2) Ensure that the Corporation operates in accordance with its Catholic mission; and

(3) Perform any and all other functions and take any and all other actions as may be directed by the Board from time to time.

* * *

SAINT PETER'S HEALTHCARE SYSTEM RETIREMENT PLAN

As Amended and Restated Effective January 1, 2010

SAINT PETER'S HEALTHCARE SYSTEM RETIREMENT PLAN

WHEREAS, the Saint Peter's University Hospital Retirement Plan (formerly known as the St. Peter's Medical Center Retirement Plan), a defined benefit plan, was established for eligible employees of Saint Peter's University Hospital. Effective March 1, 2010, sponsorship of the plan was changed to Saint Peter's Healthcare System and the name of the plan was changed to the Saint Peter's Healthcare System Retirement Plan (the "Plan"). The Plan is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") and a church plan as defined in Section 414(e) of the Code and Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended.

WHEREAS, except as may be otherwise specifically provided in the Plan or required by law (and to the extent consistent with Plan's status as a church plan under Section 3(33) of the Employee Retirement Income Security Act of 1974, as amended), Participants who terminated their employment with the System prior to January 1, 2010 shall look solely to the applicable sections of the Plan as in effect at the time of their termination for their retirement income benefits, if any.

NOW, THEREFORE, the Plan is hereby amended and restated in its entirety effective January 1, 2010.

ARTICLE 1
DEFINITIONS

Wherever used herein, the following terms shall have the following meanings unless the context otherwise requires:

1.01 Accrued Benefit

"Accrued Benefit" means, for any Participant as of any date, either (i) the sum of subsection (a) and subsection (b), or (ii) if greater, subsection (c) following:

(a) For each Participant of the Plan on January 1, 1987, the Participant's Accrued Benefit as of January 1, 1987, determined in accordance with the provisions of the Plan as in effect on January 1, 1987; and

(b) For periods commencing after January 1, 1987, the monthly retirement benefit determined in accordance with Section 5.01 with Credited Service as of the date of determination; or

(c) The monthly retirement benefit determined in accordance with Section 5.01(d).

The Accrued Benefit of any Participant with at least one Hour of Service in a Plan Year beginning after December 31, 1988 shall be equal to the greater of (d) or (e):

* * *

ARTICLE 8
ADMINISTRATION

8.01 Plan Administrator

The Plan shall be administered by the Committee as agent of the Employer. The Committee shall consist of three (3) or more persons designated by the System and the System shall designate one of said persons as Chairman of the Committee and another person, who may or may not be a member of the Committee, as Administrative Secretary of the Committee. Members of the Committee and its officers and agents may participate in the benefits under this Plan if otherwise eligible to do so. The members of the Committee shall serve at the pleasure of the System and the System shall appoint successors to fill any vacancies in the Committee.

8.02 Committee's Authority and Powers

The Committee shall have the exclusive discretionary authority and power to determine eligibility for benefits and to construe the terms and provisions of the Plan, determine questions of fact and law arising under the Plan, direct disbursements pursuant to the Plan, and exercise all other powers specified herein or which may be implied from the provisions hereof. The Committee may adopt such rules for the conduct of the administration of the Plan as it may deem appropriate.

8.03 Delegation of Duties

The Committee may delegate such of its duties and may engage such experts and other persons as it deems appropriate in connection with administering the Plan.

8.04 Compensation

No member of the Committee shall receive any Compensation for his services as such.

8.05 Exercise of Discretion

Any person with any discretionary power in the administration of the Plan shall exercise such discretion in a nondiscriminatory manner and shall discharge his duties with respect to the Plan in a manner consistent with the provisions of the Plan.

8.06 Fiduciary Liability

In administering the Plan, neither the Committee nor any member of the Committee nor any person to whom the Committee delegates any duty or power in connection with administering the Plan shall be liable, except in the case of his own willful misconduct, for:

(a) any action or failure to act,

(b) the payment of any amount under the Plan,

(c) any mistake of judgment, or

(d) any neglect, omission or wrongdoing of any other member of the Committee.

No member of the Committee shall be personally liable under any contract, agreement, bond, or other instrument made or executed by him or on his behalf as a member of the Committee.

8.07 Indemnification by System

To the extent not compensated by insurance or otherwise, the System shall indemnify and hold harmless each member of the Committee, and each partner and Employee of the System designated by the Committee to carry out any fiduciary responsibility with respect to the Plan, from any and all claims, losses,

damages, expenses (including counsel fees approved by the System) and liabilities (including any amount paid in settlement with the approval of the System), arising from any act or omission of such member, or partner or Employee, except where the same is judicially determined or is determined by the System to be due to willful misconduct of such member or Employee. No assets of the Plan may be used for any such indemnification.

8.08 Plan Participation by Fiduciaries

No person who is a fiduciary with respect to the Plan shall be precluded from becoming a Participant upon meeting the requirements for eligibility.

ARTICLE 9
AMENDMENT AND TERMINATION OF PLAN

9.01 Amendment

The System may at any time and from time to time amend the Plan by written instrument provided that:

(a) no amendment that affects the rights and obligations of the Trustee shall be effective without the written consent of the Trustee, unless such amendment is necessary for the qualification of the Plan under Section 401(a) of the Code or to avoid actual or potential liability of the System with respect to the Plan, including, without limitation, liability to make future contributions; and

(b) no amendment shall cause the Trust Fund to be used other than for the exclusive benefit of Participants and their Beneficiaries.

9.02 System's Right to Terminate Plan

The System intends to maintain the Plan as a permanent tax-qualified retirement plan. Nevertheless, the System reserves the right to terminate the Plan (in whole or in part) at any time and from time to time, for any reason whatsoever.

9.03 Consequences of Termination

(a) If the Plan is terminated in whole or in part, or if System Contributions are completely discontinued, each Participant affected by such termination or discontinuance shall be fully vested in his Accrued Benefit as of the date of such termination or discontinuance of System Contributions. The Committee shall determine the date and manner of distribution of the Accrued Benefits of all affected Participants.

(b) The Committee shall give prompt notice to each Participant (or, if deceased, his Beneficiary) affected by the Plan's complete or partial termination, or the discontinuance of System Contributions.

(c) The balance, if any, of the assets held by the Trust Fund after all liabilities have been extinguished, shall revert to the System, but only after the satisfaction of liabilities with respect to the Participants and pensions under the Plan.

9.04 Early Termination Restrictions

In the event of Plan termination, the benefit of any Highly Compensated Employee or any former Highly Compensated Employee shall be limited to a benefit that is nondiscriminatory under Section 401(a)(4) of the Code.

* * *

ARTICLE 12
GENERAL PROVISIONS

12.01 Trust Fund Sole Source of Payments for Plan

The Trust Fund shall be the sole source for the payment of all Participant's Accounts, and the Plan's liability to make payment to any Participant or his Beneficiary shall be limited to the extent that the balance in such Participant's Account is sufficient to make such payment. In no event shall assets of the Employer be applied for the payment of Plan benefits.

12.02 Exclusive Benefit

The Plan is established for the exclusive benefit of the Participants and their Beneficiaries, and the Plan shall be administered in a manner consistent with the provisions of Section 401(a) of the Code.

12.03 Recapture of Contributions

Except as specifically provided in Section 3.04, under no circumstances shall any funds contributed to the Trust Fund or any assets of the Trust Fund ever revert to, or be used by, the Employer.

12.04 Nonalienation

Except as is permitted under Section 401(a)(13) of the Code in the case of a qualified domestic relations order as defined in Section 414(p) of the Code, no Participant or Beneficiary shall have the right to alienate or assign his benefits under the Plan, and no Plan benefits shall be subject to attachment, execution, garnishment, or other legal or equitable process. If a Participant or his Beneficiary attempts to alienate or assign his benefits under the Plan, or if his property or estate should be subject to attachment, execution,

garnishment or other legal or equitable process, the Committee may direct the Trustee to distribute the Participant's (or Beneficiary's) benefits under the Plan to members of his family, or may use or hold such benefits for his benefit or for the benefit of members of his family as the Committee deems appropriate under the circumstances.

12.05 Claims Procedure

(a) All claims for benefits under the Plan by a Participant or his Beneficiary with respect to benefits not received by such person shall be made in writing to the Committee, which shall designate one of its members to review such claims. If the reviewing member believes that a claim should be denied, he shall notify the claimant in writing of the denial within ninety (90) days after his receipt of the claim, unless special circumstances require an extension of time for processing the claim. Such notice shall:

[SEAL] DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON. D.C. 20224

Aug. 14, 2013

U.I.L.: 414.08-00

Mr. Garrick J. Stoldt, Chief Financial Officer
Saint Peter's Healthcare System, Inc.
254 Easton Avenue
New Brunswick, NJ 08901

Legend:

Organization A	=	Saint Peter's Healthcare System, Inc.
Organization B	=	Diocese of Metuchen
Organization C	=	Catholic Health New Jersey, Inc.
Church R	=	Roman Catholic Church
Hospital P	=	Saint Peter's University Hospital
State J	=	New Jersey
Directory S	=	Official Catholic Directory
Plan X	=	Saint Peter's Healthcare System Retirement Plan
Plan Y	=	Saint Peter's University Hospital Retirement Plan

Dear Mr. Stoldt:

This letter is in response to your request dated October 5, 2006, as supplemented by correspondence dated July 24, 2007, November 22, 2011, January 24, 2012, February 7, 2012, February 17, 2012, May 23, 2012, April 9, 2013 and May 22, 2013, submitted

on your behalf by your authorized representatives regarding the church plan status of Plan X within the meaning of section 414(e) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalties of perjury on your behalf:

Hospital P was created by Organization B of State J to meet the charitable needs of people by providing health and human services to people in need. Organization B is a religious community organized within Church R. Hospital P was originally incorporated on March 20, 1908, pursuant to Articles of Incorporation (Articles) that have been amended from time to time. The Articles provided that the sole member of Hospital P was Organization C, a non-profit corporation. Hospital P is exempt from Federal income taxation under section 501(a) as an organization described under section 501(c)(3) of the Code, and is listed in Directory S, the official directory of Church R.

Under Article III of Hospital P's Bylaws, the powers of Hospital P generally were exercised by the Board of Trustees (Board). The Board consisted of from five to thirty trustees, including the congregational leader of Organization B and two trustees who were the designated representatives of Organization B. The exact number of trustees was fixed by Organization C and with the exception of the congregational leader of Organization B, the two representatives of Organization B, and the President of Hospital P, all trustees were subject to certain term limitations. Trustees were required to agree to conduct the activities and business of Hospital P under the philosophy of, and ethical and religious directives for, Church R health facilities as adopted by the national clerical leadership of Church R and implemented by Organization B. In

addition, the congregational leader of Organization B had the right to veto any trustee otherwise approved by Organization C.

In June, 2010, Hospital P participated in a reorganization, which resulted in the creation of a new parent corporation known as Organization A. Organization A is a nonprofit State J corporation exempt from Federal income taxation under section 501(a) of the Code by virtue of being an organization described in section 501(c)(3) of the Code. Article III of Organization A's restated Bylaws provides that the sole member of Organization A is the congregational leader of Organization B. The Board of Governors (Governors) has the authority to manage Organization A, but the congregational leader of Organization B has the sole authority and discretion to appoint and remove all Governors of Organization A, as well as the trustees of any subsidiaries, and the executive director of any subsidiary of Organization A. The congregational leader of Organization B also has the sole authority to veto any action by Organization A or it's Governors, and to exercise any powers designated to Organization A with respect to any subsidiary.

Effective January 1, 1964, Hospital P established Plan Y, a retirement savings plan, for the benefit of its employees and the employees of its subsidiaries. In June, 2010, Organization A assumed the sponsorship of Plan Y and renamed it Plan X. Plan X is a qualified plan as described in section 401(a) of the Code. Organization A has not made an election under section 410(d) of the Code with respect to Plan X.

Plan X is administered by a Retirement Plan Committee (Committee), whose members are appointed by the congregational leader of Organization B. In the past, the Committee was controlled by the Board

which was controlled by Church R, currently the Committee is controlled by the congregational leader of Organization B. The Committee serves as the Plan X administrator, and exercises the sole authority to construe and to interpret the provisions of Plan X, determine eligibility for benefits thereunder and otherwise manage the operations of Plan X.

In accordance with Revenue Procedure 2011-44, 2011-39 I.R.B. 446, Notice to Employees with reference to Plan X was originally provided on November 21, 2011 and was reissued on April 29, 2013 with a minor correction. This notice explained to participants of Plan X the consequences of church plan status.

Based on the foregoing, you request a ruling that Plan X is a church plan under the provisions of section 414(e) of the Code effective as of January 1, 1974.

Section 414(e) was added to the Code by section 1015 of ERISA. Section 1017(e) of ERISA provided that section 414(e) of the Code applied as of the date of ERISA's enactment. However, section 414(e) of the Code was subsequently amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980, Pub. Law 96-364, to provide that section 414(e) of the Code was effective as of January 1, 1974.

Section 414(e)(1) of the Code generally defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or a convention or association of churches which is exempt from taxation under section 501 of the Code.

Section 414(e)(2) of the Code provides, in part, that the term "church plan" does not include a plan that is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are

employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Code); or if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) of the Code or section 414(e)(3)(B) of the Code (or their beneficiaries).

Section 414(e)(3)(A) of the Code provides that a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(B) of the Code defines "employee" of a church or a convention or association of churches to include a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, regardless of the source of his or her compensation, and an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Code, and which is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(C) of the Code provides that a church or a convention or association of churches which is exempt from tax under section 501 of the Code shall be deemed the employer of any individual included as an employee under subparagraph (B).

Section 414(e)(3)(D) of the Code provides that an organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

Revenue Procedure 2011-44, 2011-39 I.R.B. 446 supplements the procedures for requesting a letter ruling under section 414(e) of the Code relating to church plans. The revenue procedure: (1) requires that plan participants and other interested persons receive a notice in connection with a letter ruling request under section 414(e) of the Code for a qualified plan; (2) requires that a copy of the notice be submitted to the Internal Revenue Service (IRS) as part of the ruling request; and (3) provides procedures for the IRS to receive and consider comments relating to the ruling request from interested persons.

In order for an organization that is not itself a church or convention or association of churches to have a qualified church plan, it must establish that its employees are employees or deemed employees of a church or convention or association of churches under section 414(e)(3)(B) of the Code by virtue of the organization's control by or affiliation with a church or convention or association of churches. Employees of any organization maintaining a plan are considered to be church employees if the organization: (1) is exempt from tax under section 501 of the Code; and, (2) is controlled by or associated with a church or convention or association of churches. In addition, in order to be a church plan, the plan must be administered or funded (or both) by an organization described in section 414(e)(3)(A) of the Code. To be described in section 414(e)(3)(A) of the Code, an organization must have as

its principal purpose the administration or funding of the plan and must also be controlled by or associated with a church or convention or association of churches.

In this case, Organization A, and its predecessor Hospital P, are organizations described in section 501(c)(3) of the Code which are exempt from tax under section 501(a) of the Code. Organization A is listed in Directory S which is the official directory of Church R. The sole member of Organization A is the congregational leader of Organization B. Organization B is a religious community which carries out the functions of Church R and is listed in Directory S. Therefore, Organization A, is indirectly controlled by Church R through its relationship with Organization B.

In view of the common religious bonds between Church R and Organization A, and the indirect control of Organization A by Church R through Organization B, we conclude that Organization A, the successor to Hospital P, is associated with a church or a convention or association of churches within the meaning of section 414(e)(3)(D) of the Code, that the employees of Organization A meet the definition of employee under section 414(e)(3)(B) of the Code, and that they are deemed to be employees of a church or a convention or association of churches by virtue of being employees of an organization which is exempt from tax under section 501 of the Code and which is controlled by or associated with a church or a convention or association of churches.

Plan X is administered by the Committee whose members are appointed by the congregational leader of Organization B. In the past, the Board controlled the Committee, but currently the congregational leader of Organization B controls the Committee. Therefore the Committee is associated with and under

the control of Organization B, and is indirectly associated with and under the control of Church R. Further, as represented above, the sole purpose of the Committee is the administration of Plan X for the provision of retirement benefits for the employees of Organization A. As a result, the Committee constitutes an organization described in section 414(e)(3)(A) of the Code.

Based on the foregoing facts and representations, we conclude that Plan X is a church plan within the meaning of section 414(e) of the Code, and has been a church plan within the meaning of section 414(e) of the Code retroactive to January 1, 1974. In addition, we conclude that Plan X has not been maintained primarily for the benefit of employees who are employed in connection with one or more unrelated trades or business as defined in section 513 of the Code.

This letter expresses no opinion as to whether Plan X satisfies the requirements for qualification under section 401(a) of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representatives pursuant to a Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact Wilbert G. Laird, ID Number 1000221531, at (202) 283-9630. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

/s/ Laura B. Warshawsky

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

cc. Mr. Wayne R. Kamenitz
Ernst & Young, LLP
99 Wood Avenue South
Iselin, NJ 08830

Catherine L. Creech, Esq.
Ernst & Young, LLP
1101 New York Ave, NW
Washington, DC 20005

* * *

[F] GENERAL HOSPITALS

NEW BRUNSWICK. *Saint Peter's Healthcare System, Inc.*, 254 Easton Ave., 08901. Tel: 732-745-8588; Fax: 732-745-9099.

Saint Peter's Foundation, 254 Easton Ave., 08901. Tel: 732-745-8542; Fax: 732-745-7573.

Saint Peter's Health & Management Services Corporation, 254 Easton Ave., 08901. Tel: 732-745-8556; Fax: 732-745-9099.

Saint Peter's Properties Corporation, Inc., 254 Easton Ave., 08901. Tel: 732-745-8588; Fax: 732-745-9099.

Saint Peter's University Hospital (1907) 254 Easton Ave., P.O. Box 591, 08903-0591. Tel: 732-745-8600; Fax: 732-745-9099. Email: kkillion@saintpetersuh.com. Web: www.saintpetersuh.com. Revs. A. David Chalackal, C.M.I., Chap.; Peter Suhaka, Chap.; Virginia Grey; Margaret O'Halloran; Deacon James A. Tesoriero, Dir. Pastoral Care; James Jones. Bed Capacity 478; Bassinets 77; Neonatal Intensive Care Bassinets 35; Intermediate Care Bassinets 19; Patients Assisted 455,286; Total Staff 3,248.

* * *

NOTICE TO INTERESTED PERSONS OF THE REQUEST FOR AN IRS RULING ON RETIREMENT PLAN'S STATUS AS A CHURCH PLAN

WHY ARE YOU RECEIVING THIS NOTICE?

You are receiving this notice because a letter ruling request has been submitted by Saint Peter's University Hospital, EIN #22-148730 to the Internal Revenue Service (IRS) for the Saint Peter's Healthcare System Retirement Plan for the plan year beginning January 1, 2006. The applicant requests the IRS to determine that the Plan is a church plan under § 414(e) of the Internal Revenue Code (Code).

The applicant has represented that a special election (described below, relating to § 410(d) of the Code) has not been made. Therefore, the IRS requires that this notice be provided to you.

This notice informs you that a church plan under § 414(e) of the Code is generally not required to comply with many rules that apply to other retirement plans. Thus, those protections and rights under federal law are not required to be provided to participants and other interested persons. This notice also informs you that you may give the IRS comments.

WHY DOES CHURCH PLAN STATUS MATTER?

In general, a church plan is a plan established and at all times maintained for its employees by a church or by a convention or association of churches which is exempt from tax under Code § 501(a). A church plan is generally not subject to various requirements that generally apply to retirement plans under federal law. Instead, the plan is primarily subject to certain qualification requirements that pre-date the enactment of

the Employee Retirement Income Security Act of 1974 (ERISA).

The applicant is representing that this plan is a church plan that is exempt from ERISA. This means that the plan is not required to provide certain protections and rights to plan participants. The protections applicable to ERISA-covered retirement plans that a church plan is not required to provide include the following:

- A participant's eligibility to join the plan cannot be delayed past a stated period of time. A participant's entitlement to fully vested benefits must be set forth in schedules depending on years of service, and cannot be delayed past a stated period of time
- The plan may not generally be amended to reduce previously earned benefits
- Specific minimum funding requirements apply for pension plans
- A participant has the right to bring suit under federal law for payment of benefits, fiduciary violations (such as inappropriate management of plan assets or impermissible self-dealing), and failure to receive a statement of benefits and other plan information
- A participant has the right to be notified about certain changes in the plan, and to obtain
- a copy of plan documents and certain reports filed with the government
- The insurance protection provided by the Pension Benefit Guaranty Corporation (PBGC) that applies in the event of termination of an underfunded defined benefit pension plan.

If a church plan is excluded from ERISA coverage, state laws could independently provide protections and rights to participants, beneficiaries, and alternate payees. However, this would depend on the applicable state law.

Further, if a church plan is excluded from ERISA coverage, a sponsor of the plan may choose to provide similar protections to those provided under ERISA and the Code (though PBGC insurance protection would not be available). However, the plan might be able to cease providing those protections (for future benefits or previously earned benefits) at any time, to the extent applicable state law does not prohibit such action. Also, the plan administrator is not precluded from making an election under § 410(d) (as discussed below) at a later time, in which case the plan would then become subject to ERISA and to the provisions of the Code that generally apply to tax-qualified retirement plans (and any applicable state law protections would then cease to apply).

WHAT IS THE EFFECT OF AN ELECTION TO BE SUBJECT TO ERISA?

The plan administrator of a church plan is permitted to make an irrevocable election under § 410(d) of the Code under which the plan will be subject to all of the Code requirements that generally apply to tax-qualified retirement plans including the protections and rights listed in the preceding section. If the plan administrator of a church plan makes that election, the plan must comply with applicable provisions of the Code relating to retirement plans and with ERISA. The applicant has represented that no such election has been made with respect to this plan.

WHAT IS THE SCOPE OF A LETTER RULING?

Please be aware that, if the IRS issues a ruling stating that the Saint Peter's University Hospital Retirement Plan is a church plan under Code § 414(e), that ruling is based on the information provided and is limited to the Plan's status as a church plan under § 414(e). The ruling will not make any determination regarding other events or actions, for example, regarding whether the plan administrator actually has or has not made an election under § 410(d) for this Plan in the past. Also note that while a letter ruling from the RIS would confirm a plan's status as a church plan under § 414(e), a plan is not required to have a letter ruling from the IRS in order to be a church plan under § 414(c). However, other agencies may require the applicant to have an IRS letter ruling in order for a plan to be treated as a church plan.

YOU HAVE AN OPPORTUNITY TO COMMENT

The IRS will consider any written information submitted by plan participants or other interested persons that is relevant to the ruling request. Comments not relevant to this issue will be disregarded, but relevant information, such as whether the employer is or is not controlled by or associated with a church and whether and election has or has not been made under § 410(d), will be taken into account. The relevant information must be submitted within 60 calendar days from the date this notice is provided to interested persons and must include all identifying information relating to the plan and plan sponsor listed in the first paragraph of this notice (which includes the name and identifying number of the plan sponsor, the plan name, and the plan number, if applicable). Information may be sent to the following address:

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063 McPherson Station
Washington, DC 20038

In addition to considering relevant written information from interested persons, the IRS may permit interested persons to participate in the decision-making procedure by making oral presentations at meetings to which interested persons are invited. However, it is solely within the discretion of the IRS as to whether or not there will be meetings to which interested person are invited.

Due to the tax disclosure restrictions of § 6103 of the Code, the IRS is prohibited from providing any information with respect to the letter ruling request.

WHERE TO OBTAIN FURTHER INFORMATION

For further information on rules that apply to plans that are subject to ERISA (such as to a church plan that has made an election under § 410(d) of the Code), see the information on retirement plans provided by the Department of Labor at www.dol.gov/ebsa and the Pension Benefit Guaranty Corporation at ww.pbgc.gov. You may also contact Saint Peter's Healthcare System Employee Benefits Department at 732-745-8600, extension 8842.

/s/ Susan Ballestero
Saint Peter's Healthcare System
Susan Ballestero
Vice President/Chief Human Resources Officer

[Logo]

St. Peter's Medical Center
Human Resources Department

Retirement Plan
Summary Plan Description

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Foreword

This booklet, called a Summary Plan Description (SPD), describes the principal provisions of our Retirement Plan by means of a summary and a series of questions and answers.

We hope you will read this booklet thoroughly so that you will become familiar with the principal terms of the Retirement Plan and the benefits provided. Should any question arise that is not answered to your satisfaction, the Plan Administrator will be glad to help you. A copy of the full text of the Retirement Plan is available for your inspection in the office of the Plan Administrator, Vice President of Human Resources, St. Peter's Medical Center, 254 Easton Avenue, New Brunswick, NJ 08901.

It is our expectation that the benefits provided through this Retirement Plan will contribute materially to your ability to provide for you and your family during your retirement years.

Sincerely,

/s/ John Matuska
John Matuska
President
ST. PETER'S MEDICAL CENTER

* * *

B. 50% Joint and Survivor Annuity

If you are married and you retire or continue as an employee or continue as an employee after your Normal Retirement Date, you will be deemed to have elected a 50% Joint and Survivor Annuity option. The 50% Joint and Survivor Annuity option provides for a reduced pension payable during your lifetime with the provision that after your death, one-half (0.5) of the income that you were receiving will be continued for your survivor provided said survivor survives you.

At *any* time prior to your Retirement Date, you and your spouse may decide not to take the 50% Joint and Survivor Annuity or change an election previously made. *There can be no changes after you have retired.* If you and your survivor do *not* want the 50% Joint and Survivor Annuity you *must* elect another form of annuity *and your survivor must sign a waiver indicating he/she agrees with such election*. The waiver *must* be notarized or witnessed by a Plan representative.

C. 100% Joint and Survivor Annuity

You may elect to receive a reduced pension with 100% of such pension to be continued to your survivor after your death, provided said survivor survives you.

D. Ten (10) Years Certain and Continuous Annuity

You may elect to receive a reduced pension with the provision that at least 120 monthly payments will be made (120 payments equals ten (10) years). You will be able to designate a beneficiary.

If you should die before 120 payments are made, your designated beneficiary will receive the remainder of the 120 payments until a *total* of 120 payments have been made. If you live beyond the ten (10) year period, you will continue to receive your monthly income until the month in which your death occurs. Upon death, payments cease. After the ten (10) year period, death benefits are not payable to your beneficiary.

The election of an option must be made in writing on a form provided by the Retirement Plan Committee. A representative of the Human Resources Department will review the forms of benefit payments with you at the time you make your election. Recent Internal Revenue service regulations and rulings may limit the number of available forms of payment. If you are married and designate someone other than your spouse as beneficiary, your spouse must consent in writing to the non-spouse beneficiary designation.

MISCELLANEOUS ITEMS

Termination

Although St. Peter's fully intends to continue the Pension Plan indefinitely, we reserve the right to change or end the Plan at any time. The Plan would end automatically if St. Peter's went out of business and no successor company continued the Plan.

If the Plan ends, you would stop earning benefits. However, you would then have full rights to all benefits you had already earned. Money in the trust fund would be used to provide the benefits due according to the priority required by law and stated in the plan document. Generally, the funds would first be used to pay benefits to retired participants and participants with longer service, and then would be used to pay participants with shorter service.

Benefits may be paid as soon as the Plan termination was approved by the government, or payment could be deferred to a later time. The Plan Administrator, with government approval if applicable, would determine when benefits are to be paid.

* * *

GENERAL INFORMATION ABOUT THE ST. PETER'S MEDICAL CENTER RETIREMENT PLAN

1. Plan Administration and Plan Sponsor:

Name: St. Peter's Medical Center, Inc.
Employer Identification Number: 22-1487330
Telephone Number: (908) 745-8600

2. Plan Number: 001

3. Type of Plan: Defined Benefit Pension Plan

4. Plan Anniversary: January 1

5. Plan Year: January 1 through December 31

6. Funding Medium:

The Plan is funded through a Trust Agreement entered into between St. Peter's Medical Center, Inc. and the three (3) Trustees of the Plan who are appointed by the Board of Trustees of St. Peter's Medical Center. The persons currently serving as Trustees are Mr. John Matsuka, Rev. Msgr. William J. Capik, and Mr. Anthony D. Schoberl. All contributions to the Plan will be deposited into the Trust, and all benefits due from the Plan will be paid out of the Trust. A Trust has been entered into between the Trustees of the Plan and Midlantic National Bank. The bank is merely an investment advisor and has no responsibility under the Plan other than to follow the proper instructions of the Trustees.

The basis of payments to the fund are contributions from the Medical Center in accordance with the provisions of the Plan, and the basis of payments from the fund are the payment of benefits by the bank in accordance with the provisions of the Plan. The Trustees shall be responsible for establishing and carrying out a funding policy and method consistent with the objectives of the pension program and the requirements of the Employee Retirement Income Security Act of 1974 (ERISA). St. Peter's Medical Center, Inc. shall have actuarial valuations prepared annually by an Enrolled Actuary to verify the benefits provided by the Plan and the contributions payable by the Medical Center are consistent with the minimum funding standards of ERISA.

7. Agent for Service of Legal Process:

Name: St. Peter's Medical Center, Inc.
Address: 254 Easton Avenue
Post Office Box 591
New Brunswick, New Jersey 08903-0591
Telephone Number: (908) 745-8600

* * *

APPENDIX A
PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Benefits under this plan are insured by the Pension Benefit Guaranty Corporation (PBGC) if the plan terminates. Generally, the PBGC guarantees most vested normal-age retirement benefits, early retirement benefits, and certain disability and survivor's pensions. However, the PBGC does not guarantee all types of benefits under covered plan and the amount of benefit protection is subject to certain limitations.

The PBGC guarantees vested benefits at the level in effect on the date of plan termination. However, if a plan has been in effect less than five (5) years before it terminates, or if benefits have been increased within five (5) years before plan termination, the whole amount of the plan's vested benefits or the benefit increase may not be guaranteed. In addition, there is a ceiling on the amount of monthly benefit that the PBGC guarantees, which is adjusted periodically.

For more retirement information on the PBGC insurance protection and its limitations, ask the Retirement Plan Committee or the PBGC. Inquiries to the PBGC should be addressed to the Office of Communications, PBGC, 2020 K Street, N.W., Washington, DC 20006.

The PBGC Office of Communications may also be reached by calling (202) 778-8800.

APPENDIX B
PROCEDURES FOR PRESENTING AND REVIEWING CASES

A written request must be filed with the Benefits Coordinator of the Human Resources Department, who shall, within ninety (90) days from its receipt, notify the claimant (the person making the claim) of its acceptance or denial.

If a claim is wholly or partially denied, the Benefits Coordinator of the Human Resources Department shall furnish the claimant in writing:

a. specific reasons for denial;

b. specific references to Plan provisions on which the denial is based;

c. a description of (and reason for requesting) any additional material or information needed to consider the claim; AND

d. an explanation of the review procedure.

If within ninety (90) days of submitting a claim, a notification of acceptance or denial has not been received, the claimant may request a review as if his/her claim had been denied.

Upon the denial of a claim, the claimant or his/her duly authorized representative to:

a. request a review of his/her claim by the Retirement Plan Committee – if the denial was by a written notification, the request must be made within sixty (60) days.

b. review documents relating to the denial; AND

c. submit issues and comments in writing

The Retirement Plan Committee shall make a final written decision on a claim review, within sixty (60) days, given specific reasons and references to Plan provisions on which the decision was based. The sixty (60) days may be extended for another sixty (60) days if the Retirement Plan Committee finds that special circumstances require and extension of time for processing.

APPENDIX C
STATEMENT OF ERISA RIGHTS

As a participant in the St. Peter's Medical Center Retirement Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974. ERISA provides that all plan participants shall be entitled to:

- Examine, without charge, at the Retirement Plan Committee's office and at other locations, all plan documents, including insurance contracts and copies of all documents filed by the Plan with the U.S. Department of Labor, such as annual reports and plan descriptions.
- Obtain copies of all plan documents and other plan information upon written request to the Retirement Plan Committee. The Committee may make a reasonable charge for the copies.
- Receive a summary of the Plan's annual financial report. The Retirement Plan Committee is required by law to furnish each participant with a copy of this summary annual report.
- Obtain a statement telling you whether you have a right to receive a pension at Normal Retirement Age, and if so, what your benefits

would be at Normal Retirement Age if you stop working under the Plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once a year. The Plan must provide the statement free of charge.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible of the operation of the employee benefit plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension benefit. If your benefit is denied in whole or in part, you must receive a written explanation of the reason for denial. You have the right to have the Committee review and reconsider your claim. Under ERISA, there are steps you can take to enforce your rights. For instance, if you request materials from the Plan and do not receive them within thirty (30) days, you may file suit in federal court. In such a case, the court may require the Retirement Plan Committee to provide the materials and pay you up to $100 per day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Committee. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that the Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.5. Department of Labor, or you may file suit in

a federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these fees; for example, if it finds your claim is frivolous. If you have any questions about this statement or your rights under ERISA, you should contact the nearest office of the U.S. Labor-Management Services Administration, Department of Labor.

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EIN 22-1487330 / PN 001

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Form 5500

Department of the Treasury
Internal Revenue Service

Department of Labor
Employee Benefits Security Administration

Pension Benefit Guaranty Corporation

Annual Return/Report of Employee Benefit Plan

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6057(b), and 6058(a) of the Internal Revenue Code (the Code).

▶ Complete all entries in accordance with the instructions to the Form 5500.

Official Use Only
OMB Nos. 1210-0110
1210-0089

2005

This Form is Open to Public Inspection.

Part I Annual Report Identification Information

For the calendar plan year 2005 or fiscal plan year beginning . and ending .

A This return/report is for: (1) ☐ a multiemployer plan; (3) ☐ a multiple-employer plan; or
(2) ☒ a single-employer plan (other than a multiple-employer plan); (4) ☐ a DFE (specify) _____

B This return/report is: (1) ☐ the first return/report filed for the plan; (3) ☒ the final return/report filed for the plan;
(2) ☐ an amended return/report; (4) ☐ a short plan year return/report (less than 12 months).

C If the plan is a collectively-bargained plan, check here ▶ ☐

D If filing under an extension of time or the DFVC program, check box and attach required information. (see instructions) ▶ ☒

Part II Basic Plan Information — enter all requested information

1a Name of plan
SAINT PETER'S UNIVERSITY HOSPITAL RETIREMENT PLAN

1b Three-digit plan number (PN) ▶ 001

1c Effective date of plan (mo., day, yr.) 01/01/1964

2a Plan sponsor's name and address (employer, if for a single-employer plan)
(Address should include room or suite no.)
SAINT PETER'S UNIVERSITY HOSPITAL

254 EASTON AVENUE

NEW BRUNSWICK NJ 08901-0000

2b Employer Identification Number (EIN) 22-1487330

2c Sponsor's telephone number 732-745-8600

2d Business code (see instructions) 622000

Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules, statements and attachments, as well as the electronic version of this return/report if it is being filed electronically, and to the best of my knowledge and belief, it is true, correct and complete.

SIGN HERE Signature of plan administrator 10/16/06 Date John Calandriello Type or print name of individual signing as plan administrator

SIGN HERE Signature of employer/plan sponsor/DFE 10/16/06 Date Type or print name of individual signing as employer, plan sponsor or DFE

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500. v8.2 Form 5500 (2005)

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Form **5500**

Department of the Treasury
Internal Revenue Service

Department of Labor
Pension and Welfare Benefits Administration

Pension Benefit Guaranty Corporation

Annual Return/Report of Employee Benefit Plan

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6039D, 6047(e), 6057(b), and 6058(a) of the Internal Revenue Code (the Code).

▶ Complete all entries in accordance with the instructions to the Form 5500.

Official Use Only
OMB Nos. 1210-0110
1210-0089

1999

This Form is Open to Public Inspection

Part I Annual Report Identification Information

For the calendar plan year 1999 or fiscal plan year beginning Jan , 1999 and ending Dec , 1999

A This return/report is for: (1) ☐ a multiemployer plan; (2) ☐ a multiple-employer plan; (3) ☐ a single-employer plan (other than a multiple-employer plan); (4) ☐ a DFE (specify) _____

B This return/report is: (1) ☐ the first return/report filed for the plan; (2) ☐ an amended return/report; (3) ☐ the final return/report filed for the plan; (4) ☐ a short plan year return/report (less than 12 months)

C If the plan is a collectively-bargained plan, check here ▶ ☐

D If you filed for an extension of time to file, check the box and attach a copy of the extension application ▶ ☐

Part II Basic Plan Information — enter all requested information.

1a Name of plan
ST PETERS MEDICAL CENTER RETIREMENT PLAN

1b Three-digit plan number (PN) ▶ 001

1c Effective date of plan (mo., day, yr.) 1/1/1964

2a Plan sponsor's name and address (employer, if for a single-employer plan)
(Address should include room or suite no.)
SAINT PETERS UNIVERSITY HOSPITAL

2b Employer Identification Number (EIN) 22-1487338

2c Sponsor's telephone number (732)745-8600

2d Business code (see instructions) 622000

Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules, statements and attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of plan administrator | Date | Typed or printed name of individual signing as plan administrator

Signature of employer/plan sponsor/DFE | Date | Typed or printed name of individual signing as employer, plan sponsor or DFE, as applicable

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500. v2.3 Form 5500 (1999)

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Form **5500**
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefits Administration
Pension Benefit Guaranty Corporation

Annual Return/Report of Employee Benefit Plan
(With 100 or more participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6058(a), 6047(e), 6057(b), and 6058(b) of the Internal Revenue Code, referred to as the Code.
▶ See separate instructions.

OMB Nos. 1210-0016
1210-0089

1998

This Form is Open to Public Inspection.

For the calendar plan year 1998 or fiscal plan year beginning Jan , 1998, and ending , 19 98

If A(1) through A(4), B, C, and/or D, do not apply to this year's return/report, leave the boxes unmarked.

For IRS Use Only
EP-ID

A This return/report is: (1) ☐ the first return/report filed for the plan; (3) ☐ the final return/report filed for the plan; or
(2) ☐ an amended return/report; (4) ☐ a short plan year return/report (less than 12 months).

B Check here if any information reported in 1a, 2a, 2b, or 3a changed since the last return/report for this plan . . . . . ▶ ☐
C If your plan year changed since the last return/report, check here . . . . . ▶ ☐
D If you filed for an extension of time to file this return/report, check here and attach a copy of the extension . . . . . ▶ ☑

1a Name and address of plan sponsor (employer, if for a single-employer plan) (Address should include room or suite no.)
ST PETERS MEDICAL CENTER
[illegible] AVE
[illegible] NJ [illegible]

1b Employer identification number (EIN)
22 1487330

1c Sponsor's telephone number
(732)745-8600

1d Business code (see instructions, page 30)
6220

1e CUSIP issuer number

2a Name and address of plan administrator (if same as plan sponsor, enter "Same")
ST PETERS MEDICAL CENTER
[illegible] AVE
[illegible] NJ [illegible]

2b Administrator's EIN
22 1487330

2c Administrator's telephone number

3 If the name, address, and EIN of the plan sponsor or plan administrator has changed since the last return/report filed for this plan, enter the information from the last return/report in line 3a and/or line 3b and complete line 3c.

a Sponsor ..... EIN ..... Plan number .....
b Administrator ..... EIN .....
c If line 3a indicates a change in the sponsor's name, address, and EIN, is this a change in sponsorship only? (See line 3c on page 8 of the instructions for the definition of sponsorship.) Enter "Yes" or "No." ▶

4 **ENTITY CODE.** (If not shown, enter the applicable code from page 8 of the instructions.) ▶ A

5a Name of plan ▶ [illegible] RETIREMENT PLAN

5b Effective date of plan (mo., day, yr.) 01/01/1964

5c Three-digit plan number ▶ 001

All filers must complete 6a through 6d, as applicable.

6a ☐ Welfare benefit plan 6b ☑ Pension benefit plan
(Enter the applicable codes from page 8 of the instructions in the boxes.)

1								

6c Pension plan features. (Enter the applicable pension plan feature codes from page 8 of the instructions in the boxes.)

1								

6d ☐ Fringe benefit plan. Attach Schedule F (Form 5500). See instructions.

Caution: *A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.*

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of employer/plan sponsor ▶ ..... Date ▶ .....
Type or print name of individual signing above DAVID LISTER
Signature of plan administrator ▶ ..... Date ▶ .....
Type or print name of individual signing above

For Paperwork Reduction Act Notice, see the instructions for Form 5500. Cat. No. 13500F Form **5500** (1998)

Form **5500**
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension and Welfare Benefits Administration
Pension Benefit Guaranty Corporation

Annual Return/Report of Employee Benefit Plan

(With 100 or more participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6058(), 6057(a), and 6059(a) of the Internal Revenue Code, referred to as the Code.

▶ See separate instructions.

OMB No. 1210-0016

1992

This Form is Open to Public Inspection.

For the calendar plan year 1992 or fiscal plan year beginning Jan , 1992, and ending Dec , 19 92

A If *(1)* through *(4)* do not apply to this year's return/report, leave the boxes unmarked. This return/report is:
(1) ☐ the first return/report filed for the plan;
(2) ☐ an amended return/report;
(3) ☐ the final return/report filed for the plan; or
(4) ☐ a short plan year return/report (less than 12 months).

For IRS Use Only
EP-ID

If the preprinted information in 1a through 6d is incorrect, please correct it; if any information is missing, please add it. Be sure to include this page with your completed return/report.

B IF YOU CORRECT ANY OF THE PREPRINTED INFORMATION OR ADD MISSING INFORMATION IN 1a THROUGH 6d, CHECK HERE . . . . . ▶ ☐
C If your plan year changed since the last return/report, check here . . . . . ▶ ☐
D If you filed for an extension of time to file this return/report, check here and attach a copy of the approved extension . . . . . ▶ ☐

1a Name and address of plan sponsor (employer, if for a single-employer plan) (address should include room or suite no.)
SAINT PETERS MEDICAL CENTER
254 EASTON AVE
NEW BRUNSWICK, NJ 08901-1766543

1b Employer identification number
22 1487330

1c Sponsor's telephone number
(908)745-8600

1d Business code (see instructions, page 23)
8060

1e CUSIP issuer number

2a Name and address of plan administrator (if same as plan sponsor, enter "Same")
ST PETERS MEDICAL CENTER
254 EASTON AVE
NEW BRUNSWICK, NJ 08901-0000

2b Administrator's employer identification no.
22 1487338

2c Administrator's telephone number
(908)745-8600

3 If you are filing this page without the preprinted historical plan information and the name, address and EIN of the plan sponsor or plan administrator has changed since the last return/report filed for this plan, enter the information from the last return/report in 3a and/or 3b and complete 3c.
a Sponsor ..... EIN ..... Plan number .....
b Administrator ..... EIN .....
c If 3a indicates a change in the sponsor's name, address, and EIN, is this a change in sponsorship only? (See instruction 3c on page 9 for the definition of sponsorship.) Enter "Yes" or "No." ▶ .....

4 ENTITY CODE. (If not shown, enter the applicable code from page 9 of the instructions.) ▶ A

5a Name of plan ▶ ST PETERS MEDICAL CENTER RETIREMENT PLAN

5b Effective date of plan (mo., day, yr.) 01/04/1901

5c Three-digit plan number ▶ 001

6 All filers must complete 6a through 6d, as applicable.
a ☐ Welfare benefit plan b ☑ Pension benefit plan
(If the correct codes are not preprinted below, enter the applicable codes from page 9 and 10 of the instructions in the boxes.)

1							

c Pension plan features. (If the correct codes are not preprinted below, enter the applicable pension plan feature codes from page 10 of the instructions in the boxes.)

1							

d ☐ Fringe benefit plan. Attach Schedule F (Form 5500). See instructions.

Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of employer/plan sponsor ▶ ..... Date ▶ .....
Type or print name of individual signing for the employer/plan sponsor JOHN MATUSKA
Signature of plan administrator ▶ ..... Date ▶ .....
Type or print name of individual signing for the plan administrator JOHN MATUSKA

For Paperwork Reduction Act Notice, see page 1 of the instructions. Cat. No. 13600F Form **5500** (1992)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

No.

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

CLASS ACTION COMPLAINT

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Plaintiff Laurence Kaplan, individually and on behalf of all those similarly situated, as well as on behalf of the Saint Peter's Healthcare System Retirement Plan, as defined herein, by and through his attorneys, hereby alleges as follows:

I. IDENTIFICATION OF PARTIES (LOCAL RULE 10.1)

1. Plaintiff Laurence Kaplan's address is 5 Cardigan Dr., Toms River, NJ 08757. Defendant Saint Peter's Healthcare System's ("St. Peter's" or "Defendant") principal place of business is at 254 Easton Avenue, New Brunswick, NJ 08901. At this time, Plaintiff does not know with certainty the addresses of the individual Defendants, Ronald Rak, Susan Ballestero and Garrick Stoldt. At this time, Plaintiff also does not know the addresses of Defendants John and Jane Does 1-20 because the identity of these individuals will be determined after discovery.

II. INTRODUCTION

2. Plaintiff agrees that Defendant Saint Peter's Healthcare System ("Saint Peter's" or "Defendant") operates a hospital conglomerate and provides good healthcare services in the communities it serves. That is not what this case is about. Instead, this case is about whether Saint Peter's properly maintains its pension plan under the Employee Retirement Income Security Act ("ERISA"). As demonstrated herein, Saint Peter's fails to do so, to the detriment of the more than 4,700 Plan participants who deserve better.

3. As its name implies, ERISA was crafted to protect employee retirement funds. A comprehensive history of ERISA put it this way:

> Employees should not participate in a pension plan for many years only to lose their pension . . . because their plan did not have the funds to meet its obligations. The major reforms in ERISA—fiduciary standards of conduct, minimum vesting and funding standards, and a government-run insurance program—aimed to ensure that long-service employees actually received the benefits their retirement plan promised.

James Wooten, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, at 3 (U. Cal. 2004).

4. This class action is brought on behalf of participants and beneficiaries of the Saint Peter's Healthcare System Retirement Plan, which is maintained by Saint Peter's and operated as or claimed to be a "Church Plan" under ERISA (referred to as the "Saint Peter's Plan" or simply the "Plan"). Saint Peter's is violating numerous provisions of ERISA—including underfunding the Saint Peter's Plan by over $70 million—while erroneously claiming that the Plan is exempt from ERISA's protections because it is a "Church Plan." But the Saint Peter's Plan does not meet the definition of a Church Plan because Saint Peter's plainly is not a church or a convention or association of churches and because the Saint Peter's Plan was not established by a church or convention or association of churches. That should be the end of the inquiry under ERISA, resulting in a clear finding that the Saint Peter's Plan is not a Church Plan.

5. Even if, however, these facts were different, and the Saint Peter's Plan could otherwise qualify for Church Plan status, it would be specifically excluded from such status because substantially all of the

participants in the Plan are *not* employed by an organization that is controlled by or associated with the Catholic Church, within the meaning of ERISA. Saint Peter's is not controlled by the Catholic Church and, despite its name, is not "associated with" the Catholic Church within the meaning of ERISA because it does not share common religious bonds and convictions with the Catholic Church.

6. A sampling of facts reveals Saint Peter's as a non-profit hospital system, not unlike other non-profit hospital systems. It is not operated by the Catholic Church and does not receive funding from the Catholic Church. Moreover, Saint Peter's deliberately chooses to distance itself from, or even abrogate, many religious convictions of the Catholic Church when it is in its economic interest to do so, such as when it hires employees; sponsors a medical residency program that includes instruction in medical procedures forbidden by the Catholic Church; invests in various business enterprises; encourages its clients to seek divergent and contrary spiritual support; and collaborates with medical institutions that claim no religious affiliation of any kind.

7. Employees. With respect to recruiting and hiring its employees—those who then become the Saint Peter's Plan participants, Saint Peter's does not require that prospective employees be Catholic. Like many employers, Saint Peter's promotes itself by insisting that it hires regardless of whether there are any common religious convictions. In other words, Saint Peter's recruits retirement plan participants, in part, by assuring them that their religiosity, or absence thereof, is not relevant.

8. Medical Procedures. Saint Peter's Obstetrics and Gynecology Residency Program includes

instruction in procedures forbidden by the Catholic Church, including sterilization procedures such as tubal ligation and the use of contraception.

9. Other Investments. With respect to its investing in various enterprises, Saint Peter's does not restrict itself to investments related to the Catholic Church. Saint Peter's is the owner of three for-profit entities, including a captive insurance company and a debt collection company.

10. Spiritual Guidance. With respect to its offering of spiritual support to its clients/patients, Saint Peter's specifically chooses not to promote the Catholic faith. And Saint Peter's does not just remain neutral on this issue and allow patients to do as they please with respect to their religiosity, or lack thereof. Instead, Saint Peter's actively encourages its patients to reach out to their own priests, ministers, rabbis or spiritual advisors for guidance. It is axiomatic that these individuals, whom the Saint Peter's clients are encouraged to seek—including those from the Jewish, Islamic, Hindu and Protestant faiths—have religious convictions that the Catholic Church views as clear error.

11. Non-Religious Affiliations. Saint Peter's is a teaching hospital for Drexel University and serves as the New Jersey Campus for Drexel's medical school. Saint Peter's also has a clinical collaboration with the Children's Hospital of Philadelphia. Neither Drexel nor the Children's Hospital claims any religious affiliation of any kind.

12. In short, Saint Peter's operates in most respects like other non-profit hospital systems. It expressly chooses not to prioritize the convictions of the Catholic Church (i) when it hires its employees—who become

Saint Peter's Plan participants, (ii) when Saint Peter's sponsors a medical residency program that includes instruction in procedures forbidden by the Catholic Church, (iii) when it selects its business investments, (iv) when it encourages its clients to contact myriad priests, ministers, rabbis or spiritual advisors, and (v) when it collaborates with medical institutions that claim no religious affiliation of any kind.

13. Whether Saint Peter's makes these choices without forethought, or whether it makes them deliberately, to satisfy large non-Catholic donors, its employees, its clients/patients, the spiritual community, the secular community, and/or its management, is unknown.

14. On the other side of the scale is Saint Peter's attempt to claim "Church Plan" status for the Saint Peter's Plan—it wants to maintain and impose a religious status not on its employees, or in any of the areas detailed above, but instead only on the *retirement dollars* of its employees. Saint Peter's imposes religious status on those retirement dollars because in so doing, according to Saint Peter's, it may underfund the Saint Peter's Plan by over $70 million and be excused from the necessary protections that ERISA provides. Fortunately, as set forth below, ERISA does not allow non-Church entities to selectively impose religious status to shirk their responsibility to protect the retirement dollars of their employees.

15. And, even if the Saint Peter's Plan could clear all the ERISA Church Plan hurdles, the Church Plan exemption, as claimed by Saint Peter's, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective. It harms Saint Peter's employees,

unfairly disadvantages Saint Peter's competitors, and accommodates no undue burden caused by ERISA on any Saint Peter's religious practices.

16. It is worth noting in this Summary that this case is not akin to the disputes concerning mandatory contraceptive coverage by religious institutions. ERISA does not require retirement plans to afford protections to employees that may be contrary to religious doctrine.

17. Saint Peter's claim of Church Plan status for its defined benefit plan fails under both ERISA and the First Amendment. That is what this case is about.

18. Plaintiff seeks an Order requiring Saint Peter's to comply with ERISA and afford the Class all the protections of ERISA with respect to the Saint Peter's Plan, as well as an Order finding that the Church Plan exemption, as claimed by Saint Peter's, is unconstitutional because it violates the Establishment Clause of the First Amendment.

III. JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States and pursuant to 29 U.S.C. § 1132(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA.

20. This Court has personal jurisdiction over Defendant Saint Peter's because Saint Peter's is headquartered and transacts business in, and has significant contacts with, this District, and because ERISA provides for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

21. This Court has personal jurisdiction over all the Individual Defendants (defined below) because, upon information and belief, they are Officers of Saint Peter's and work in this District and because ERISA provides for nationwide service of process. *Id.*

22. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because (a) the Plan is administered in this District, (b) some or all of the violations of ERISA took place in this District, and/or (c) Saint Peter's may be found in this District.

23. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Saint Peter's is headquartered in this District, and systematically and continuously does business in this District, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.

IV. PARTIES

24. Plaintiff Laurence Kaplan. Plaintiff Laurence Kaplan was an employee of Saint Peter's from 1985 until 1999. Plaintiff Kaplan is a participant in a pension plan maintained by Saint Peter's because he is or will become eligible for pension benefits under the Plan to be paid at normal retirement age. Additionally and alternatively, Plaintiff Kaplan has a colorable claim to benefits under a pension plan maintained by Saint Peter's and is a participant within the meaning of ERISA section 2(7), 29 U.S.C. § 1002(7), and is therefore entitled to maintain an action with respect to the Saint Peter's Plan pursuant to ERISA sections 502(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3), 29 U.S.C. § 1132(a)(1)(A) and (B), (a)(2), (a)(3), and (c)(1) and (3).

25. Defendant Saint Peter's. Saint Peter's is a 501(c)(3) non-profit corporation organized under, and governed by, the New Jersey Non-Profit Corporation Act, Title 15A of the New Jersey Statutes. Saint Peter's is headquartered in New Brunswick, New Jersey. Saint Peter's is the employer responsible for maintaining the Saint Peter's Plan and is, therefore, the plan sponsor of the Saint Peter's Plan within the meaning of ERISA section 3(16)(B), 29 U.S.C. § 1002(16)(B). Defendant Saint Peter's is designated as the "administrator" of the Saint Peter's Plan by the terms of the instrument under which the Saint Peter's Plan is operated. In the alternative, if no administrator is designated in the documents governing the Saint Peter's Plan, Saint Peter's is the employer that establishes or maintains the Saint Peter's Plan and thus is the plan sponsor of the Saint Peter's Plan within the meaning of ERISA section 3(16)(A), 29 U.S.C. § 1002(16)(A). Defendant Saint Peter's is also a fiduciary of the Saint Peter's Plan within the meaning of ERISA section 3(21)(A), 29 U.S.C. § 1002(21)(A).

26. Defendant Ronald C. Rak. Defendant Ronald C. Rak is the President and Chief Executive Officer of Saint Peter's. Defendant Rak regularly communicated with Plan participants about the Saint Peter's Plan and, upon information and belief, Defendant Rak's responsibilities include fiduciary oversight of the Saint Peter's Plan. Accordingly, Defendant Rak is a fiduciary of the Plan within the meaning of ERISA.

27. Defendant Susan Ballestero. Defendant Susan Ballestero is Vice President and Chief Human Relations Officer of Saint Peter's. Defendant Ballestero regularly communicated with Plan participants about the Saint Peter's Plan and, upon information and belief, Defendant Ballestero's responsibilities include

fiduciary oversight of the Saint Peter's Plan. Accordingly, Defendant Ballestero is a fiduciary within the meaning of ERISA.

28. Defendant Garrick Stoldt. Defendant Garrick Stoldt is Vice President and Chief Financial Officer of Saint Peter's. Defendant Stoldt regularly communicated with Plan participants about the Saint Peter's Plan and, upon information and belief, Defendant Stoldt's responsibilities include fiduciary oversight of the Saint Peter's plan. Accordingly, Defendant Stoldt is a fiduciary within the meaning of ERISA.

29. Defendants John and Jane Does 1-20. Defendants John and Jane Does 1-20 are individuals who through discovery are found to have fiduciary responsibilities with respect to the Saint Peter's Plan and are fiduciaries within the meaning of ERISA. These individuals will be added by name as defendants in this action upon motion by Plaintiff at an appropriate time. Defendants Rak, Ballestero, Stoldt and John and Jane Does 1-20 are referred to herein collectively as the "Individual Defendants."

V. THE BACKGROUND OF THE CHURCH PLAN EXEMPTION

A. The Adoption of ERISA

30. Following years of study and debate, and with broad bi-partisan support, the Congress adopted ERISA in 1974, and the statute was signed into law by President Ford on Labor Day of that year. Among the factors that led to the enactment of ERISA were the widely publicized failures of certain defined benefit pension plans, especially the plan for employees of Studebaker Corporation, an automobile manufacturing company which defaulted on its pension obligations in 1965. *See generally* John Langbein *et al.*,

PENSION AND EMPLOYEE BENEFIT LAW 78-83 (2010) ("The Studebaker Incident").

31. As originally adopted in 1974, and today, ERISA protects the retirement savings of pension plan participants in a variety of ways. As to participants in traditional defined benefit pension plans, such as the plan at issue here, ERISA mandates, among other things, that such plans be currently funded and actuarially sound, that participants' accruing benefits vest pursuant to certain defined schedules, that the administrators of the plan report certain information to participants and to government regulators, that the fiduciary duties of prudence, diversification, loyalty, and so on apply to those who manage the plans, and that the benefits promised by the plans be guaranteed, up to certain limits, by the Pension Benefit Guaranty Corporation. *See, e.g.*, ERISA §§ 303, 203, 101-106, 404-406, 409, 4007, 4022, 29 U.S.C. §§ 1083, 1053, 1021-1026, 1104-1106, 1109, 1307, 1322.

32. ERISA is centered on pension plans, and particularly defined benefit pension plans, as is reflected in the very title of the Act, which addresses "retirement income security." However, ERISA also subjects to federal regulation defined contribution pension plans (such as 401(k) plans) and welfare plans, which provide health care, disability, severance and related non-retirement benefits. ERISA § 3(34) and (1), 29 U.S.C. § 1002(34) and (1).

B. The Scope of the Church Plan Exemption in 1974

33. As adopted in 1974, ERISA provided an exemption for certain plans, in particular governmental plans and Church Plans. Plans that met the statutory definitions were exempt from all of ERISA substantive

protections for participants. ERISA § 4(a) and (b), 29 U.S.C. § 1003(a) and (b).

34. ERISA defined a Church Plan as a plan "established and maintained for its employees by a church or by a convention or associations of churches."[1]

35. Under the 1974 legislation, although a Church Plan was required to be established and maintained by a church, it could also include employees of certain pre-existing agencies of such church, but only until 1982. ERISA § 3(33)(C) (1974), 29 U.S.C. § 1002(33)(C) (1974) (current version as amended at 29 U.S.C. § 1002(33) (West 2013)). Thus, under the 1974 legislation, a pension plan that was not established and maintained by a church could not be a Church Plan. *Id.*

C. The Changes to the Church Plan Exemption in 1980

36. Church groups had two major concerns about the definition of "Church Plan" in ERISA as adopted in 1974. The first, and far more important, concern was that a Church Plan after 1982 could not include the lay employees of agencies of a church. The second concern that arose in the church community after 1974 was more technical. Under the 1974 statute, all Church Plans, single-employer or multiemployer, had to be "established and maintained" by a church or a convention/association of churches. This ignored the role of the churches' financial services organizations in

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[1] ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A). ERISA is codified in both the labor and tax provisions of the United States Code, titles 29 and 26 respectively. Many ERISA provisions appear in both titles. For example, the essentially identical definition of Church Plan in the Internal Revenue Code is found at 26 U.S.C. § 414(e).

the day-to-day management of the pension plans. In other words, although Church Plans were "established" by a church, in practice they were often "maintained" by a separate financial services organization of the church, usually incorporated and typically called a church "pension board."

37. These two concerns ultimately were addressed when ERISA was amended in 1980 in various respects, including a change in the definition of "Church Plan." Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), P.L. 96-364. The amended definition is current law.

38. As to the first concern (regarding employees of agencies of a church), Congress included a new definition of "employee" in subsection (C)(ii)(II) of section 3(33) of ERISA. 29 U.S.C. § 1002(33)(C)(ii)(II) (1980) (current version at 29 U.S.C. § 1002(33)(C)(ii)(II) (West 2013)). As amended, an "employee" of a church or a convention/association of churches includes an employee of an organization "which is controlled by or associated with a church or a convention or association of churches." *Id.* The phrase "associated with" is then defined in ERISA section 3(33)(C)(iv) to include only those organizations that "share[] common religious bonds and convictions with that church or association of churches." 29 U.S.C. § 1002(33)(C)(iv) (1980) (current version at 29 U.S.C. § 1002(33)(C)(iv) (West 2013)). Although this new definition of "employee" permitted a "Church Plan" to include among its participants employees of organizations controlled by or associated with the church, convention, or association of churches, it remains the case that a plan covering such "employees" cannot qualify as a "Church

Plan" unless it was "established by" the church, convention, or association of churches. ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A) (West 2013).

39. As to the second concern (regarding plans "maintained by" a separate church pension board), the 1980 amendment spoke to the issue as follows:

> A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, *the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits*, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

ERISA § 3(33)(C)(i) (1980), 29 U.S.C. § 1002(33)(C)(i) (1980) (emphasis added) (current version at 29 U.S.C. § 1002(33)(C)(i) (West 2013)). Accordingly, under this provision, a plan "established" by a church or a convention or association of churches could retain its "Church Plan" status even if the plan was "maintained" by a distinct organization, so long as (1) "the principal purpose or function of [the organization] is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits," and (2) the organization is "controlled by or associated with" the church or convention of association of churches. ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i) (1980) (current version at 29 U.S.C. § 1002(33)(C)(i) (West 2013)).

40. This church "pension board" clarification has no bearing on plans that were not "established" by a church or convention or association of churches. Thus, a plan "established" by an organization "controlled by or associated with" a church would not be a "Church Plan" because it was not "established" by a church or a convention or association of churches.

41. Further, this "pension board" clarification has no bearing on plans that were not "maintained" by a church pension board. Thus, even if a plan were "established" by a church, and even if it were "maintained by" an organization "controlled by or associated with" a church, such as a school, hospital, or publishing company, it still would not be a "Church Plan" if the principal purpose of the organization was *other than* the administration or funding of the plan. In such plans, the plan is "maintained" by the school, hospital or publishing company, and usually through the human resources department of such entity. It is not maintained by a church pension board: No "organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits" maintains the plan. Compare with ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i) (1980) (current version at 29 U.S.C. § 1002(33)(C)(i) (West 2013)).

42. The requirements for Church Plan status under ERISA, both as originally adopted in 1974 and as amended in 1980, are, as explained above, very clear. And there is no tension between the legislative history of the 1980 amendment and the amendment itself: The Congress enacted exactly what it wanted to enact. Fundamental to the scheme, both as originally adopted and as fine-tuned in 1980, was that neither an

"affiliate" of a church (using the 1974 language) nor "an organization controlled by or associated with a church" (using the 1980 language) could *itself* establish a Church Plan. Its employees could be *included* in a Church Plan, but if it sponsored its own plan, that was not a Church Plan. With respect to "pension boards," the 1980 legislation simply clarified the long standing practice that churches could use their own financial organizations to manage their Church Plan.

43. Unfortunately, in 1983, in response to a request for a private ruling, the Internal Revenue Service ("IRS") issued a short General Counsel Memorandum that misunderstood the statutory framework. The author incorrectly relied on the "pension board" clarification to conclude that a non-church entity could sponsor its own Church Plan as long as the plan was managed by some "organization" that was controlled by or associated with a church. This of course is not what the statute says, nor what Congress intended. In any event, this mistake was then repeated, often in verbatim language, in subsequent IRS determinations and, after 1990, in DOL determinations. Under the relevant law, these private rulings may only be relied upon by the parties thereto, within the narrow confines of the specific facts then disclosed to the agencies, and are not binding on this Court in any event. A few district court cases have relied on those letters to reach the same erroneous conclusion.

VI. SAINT PETER'S

A. Saint Peter's Operations.

44. Defendant Saint Peter's is a New Jersey not-for-profit corporation organized under, and governed by, the New Jersey Non-Profit Corporation Act, Title 15A of the New Jersey Statutes. Saint Peter's owns Saint

Peter's University Hospital and its subsidiaries and Saint Peter's Health and Management Services Corporation, which oversees a long-term care and rehabilitation facility.

45. Saint Peter's employs more than 2,800 individuals.

46. Saint Peter's owns a debt collection company and a captive insurance company, Risk Assurance Company in the Cayman Islands.

47. Like other non-profit hospital systems, Saint Peter's relies upon revenue bonds to raise money.

48. The management of Saint Peter's is comprised primarily of lay people, and Executive Officers of Saint Peter's receive compensation in line with executive officers of other hospital systems. At least nine officers or key employees received reportable compensation in excess of half a million dollars in 2010.

49. Saint Peter's does not receive funding from the Catholic Church or other religious organizations.

50. Saint Peter's specifically does not limit employment to those of the Catholic faith, but instead hires employees without any reference to creed or religion.

51. Saint Peter's does not claim to be a church and it is not one.

52. Saint Peter's sponsors a medical residency program that includes instruction in procedures forbidden by the Catholic Church, including sterilization procedures such as tubal ligation and the use of contraception.

53. Saint Peter's does not impose its beliefs or religious practices on its clients/patients. In fact, Saint

Peter's offers contact with the minister, priest, rabbi, or spiritual leader of its patients' choosing.

54. Saint Peter's collaborates with medical institutions that claim no religious affiliation of any kind, such as Drexel University and Children's Hospital of Philadelphia.

55. Saint Peter's purports to disclose, and not keep confidential, its own financial records. For example, Saint Peter's is required and in some cases has voluntarily elected to comply with a broad array of elaborate state and federal regulations and reporting requirements, including Medicare and Medicaid. In addition, Saint Peter's makes public its consolidated financial statements, which describe Saint Peter's representations as to its own operations and financial affairs. Finally, Saint Peter's financial information is regularly disclosed to the rating agencies and the public when tax exempt revenue bonds are issued.

B. The Saint Peter's Plan

56. Saint Peter's maintains the Saint Peter's Plan, which is a non-contributory defined benefit pension plan covering substantially all of Saint Peter's employees hired before July 1, 2010. From its inception in 1974 until sometime in 2006, the Saint Peter's Plan was operated as an ERISA-covered plan. It was funded in accordance with ERISA, met ERISA reporting requirements, and paid premiums to the Pension Benefit Guarantee Corporation ("PBGC"), the federal agency that provides pension insurance to ERISA covered plans. Saint Peter's was also insured by the PBGC.

57. From its inception until sometime in 2006, Saint Peter's continuously represented in Plan documents, public statements, written letters, in-person

meetings, and other communications with its employees that it operated an ERISA-covered plan. For example:

- As late as January 2006, Plan participants were told that the Plan was covered under ERISA and by the PBGC. Participants were informed that, as participants in the Plan, they were entitled to certain rights and protections under ERISA and were provided with a formal "Statement of ERISA Rights." Plan participants were also informed that if the Plan terminated without enough money to pay all benefits, the PBGC would step in to pay pension benefits.
- Plan participants were given annual reports informing them that, with regard to ERISA's minimum funding standards, an actuary's statement showed that enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA.

58. In 2006, Saint Peter's, for the first time in the 32-year history of its Plan, concluded that it was a church plan not subject to ERISA and filed an application for church-plan status with the IRS. However, even after filing for this church-plan exemption, Saint Peter's continued paying insurance premiums to the PBGC as an ERISA plan.

59. Saint Peter's did not notify its employees of its application for church-plan status until November 2011.

60. Shortly thereafter, John Matuska, Saint Peter's former Chief Financial Officer, Chief Operating

Officer and Chief Executive Officer and a member of the Retirement Plan Committee from 1977 through 2001, informed the IRS that the Saint Peter's Plan has never been nor was it ever considered to be a Church Plan.

61. Sometime in 2010, the Saint Peter's Plan was amended such that effective July 1, 2010, any employee hired after June 30, 2010 would not be eligible to participate in the Plan. Additionally, active participation in the Plan was frozen for any employee who terminated employment before July 1, 2010 and is rehired after that date and for any employee who terminated employment on or after July 1, 2010, unless he or she is rehired before the first anniversary of their termination.

62. Sometime in 2012, Saint Peter's established a defined contribution plan for employees hired as of July 1, 2010. Saint Peter's announced that the defined contribution plan would be operated as an ERISA-covered plan and would not claim Church Plan status.

63. Saint Peter's also sponsors a health benefit plan that it operates as an ERISA-covered plan.

64. The IRS has not issued a determination letter on Saint Peter's application for church plan status.

65. As of December 31, 2011, the Saint Peter's Plan was underfunded by more than $70 million.

1. Saint Peter's Plan Meets the Definition of an ERISA Defined Benefit Plan

66. The Saint Peter's Plan is a plan, fund, or program that was established or maintained by Saint Peter's and which by its express terms and surrounding circumstances provides retirement income to employees and/or results in the deferral of income by

employees to the termination of their employment or beyond. As such, the Saint Peter's Plan meets the definition of an "employee pension benefit plan" within the meaning of ERISA section 3(2)(A), 29 U.S.C. § 1002(2)(A).

67. The Saint Peter's Plan does not provide for an individual account for each participant and does not provide benefits solely upon the amount contributed to a participant's account. As such, the Saint Peter's Plan is a defined benefit plan within the meaning of ERISA section 3(35), 29 U.S.C. § 1002(35), and is not an individual account plan or a "defined contribution plan" within the meaning of ERISA section 3(34), 29 U.S.C. § 1002(34).

2. Saint Peter's is the Plan Sponsor, Plan Administrator and a Fiduciary; and the Individual Defendants are Fiduciaries

68. As an employer establishing and/or maintaining the Saint Peter's Plan, Defendant Saint Peter's is and has been the Plan Sponsor of the Saint Peter's Plan within the meaning of ERISA section 3(16)(B), 29 U.S.C. § 1002(16)(B), at least since 1974.

69. Upon information and belief, at least from 2006 until the present, the terms of the instrument under which the Saint Peter's Plan is operated do not specifically designate any person as a Plan Administrator sufficient to meet the requirements of ERISA section 402, 29 U.S.C. § 1102.

70. In the absence of a Plan Administrator specifically designated in or pursuant to any instrument governing the Plan, the Plan Sponsor of the Saint Peter's Plan under ERISA section 3(16)(A)(ii), 29 U.S.C. § 1002(16)(A)(ii), is the Plan Administrator.

71. As Defendant Saint Peter's is and has been the Plan Sponsor of the Saint Peter's Plan, Defendant Saint Peter's is also the Plan Administrator of the Plan within the meaning of ERISA section 3(16)(A), 29 U.S.C. § 1002(16)(A). As such, Defendant Saint Peter's also is and has been a fiduciary with respect to the Plan within the meaning of ERISA section 3(21)(A)(iii), 29 U.S.C. § 1002(21)(A)(iii), because the Plan Administrator, by the very nature of the position, has discretionary authority or responsibility in the administration of the Plan.

72. Defendant Saint Peter's is also a fiduciary with respect to the Saint Peter's Plan within the meaning of ERISA section 3(21), 29 U.S.C. § 1002(21), because it exercises discretionary authority or discretionary control respecting management of the Saint Peter's Plan, exercises authority and control respecting management or disposition of the Saint Peter's Plan assets, and/or has discretionary authority or discretionary responsibility in the administration of the Saint Peter's Plan.

73. Defendant Rak, as the President and Chief Executive Officer of Saint Peter's, is also a fiduciary with respect to the Saint Peter's Plan within the meaning of ERISA section 3(21), 29 U.S.C. § 1002(21), because, upon information and belief, he exercises discretionary authority or discretionary control respecting management of the Saint Peter's Plan, exercises authority and control respecting management or disposition of the Saint Peter's Plan assets, and/or has discretionary authority or discretionary responsibility in the administration of the Saint Peter's Plan.

74. Defendant Ballestero, as the Vice President and Chief Human Resources Director of Saint Peter's, is also a fiduciary with respect to the Saint Peter's Plan

within the meaning of ERISA section 3(21), 29 U.S.C. § 1002(21), because, upon information and belief, she exercises discretionary authority or discretionary control respecting management of the Saint Peter's Plan, exercises authority and control respecting management or disposition of the Saint Peter's Plan assets, and/or has discretionary authority or discretionary responsibility in the administration of the Saint Peter's Plan.

75. Defendant Stoldt, as the Vice President and Chief Financial Officer of Saint Peter's, is also a fiduciary with respect to the Saint Peter's Plan within the meaning of ERISA section 3(21), 29 U.S.C. § 1002(21), because, upon information and belief, he exercises discretionary authority or discretionary control respecting management of the Saint Peter's Plan, exercises authority and control respecting management or disposition of the Saint Peter's Plan assets, and/or has discretionary authority or discretionary responsibility in the administration of the Saint Peter's Plan.

3. The Saint Peter's Plan Is Not a Church Plan

76. Saint Peter's claims the Saint Peter's Plan is a Church Plan under ERISA section 3(33), 29 U.S.C. § 1002(33), and the analogous section of the Internal Revenue Code ("IRC"), and is therefore exempt from ERISA's coverage under ERISA section 4(b)(2), 29 U.S.C. § 1003(b)(2).

a. Only Two Types of Plans May Qualify as a Church Plan and The Saint Peter's Plan is Neither

77. Under section 3(33) of ERISA, 29 U.S.C. § 1002(33), only the following two types of plans may qualify as a Church Plan:

- First, under section 3(33)(A) of ERISA, 29 U.S.C. § 1002(33)(A), a plan *established and maintained* by a church or convention or association of churches, can qualify under certain circumstances and subject to the restrictions of section 3(33)(B) of ERISA, 29 U.S.C. § 1002(33)(B); and
- Second, under section 3(33)(C)(i) of ERISA, 29 U.S.C. § 1002(33)(C)(i), a plan *established* by a church or by a convention or association of churches that is *maintained* by an organization, *the principal purpose or function of which* is the administration or funding of a retirement plan, if such organization is controlled by or associated with a church or convention or association of churches, can qualify under certain circumstances and subject to the restrictions of section 3(33)(B) of ERISA, 29 U.S.C. § 1002(33)(B).

Both types of plans must be "established" by a church or by a convention or association of churches in order to qualify as a "Church Plan."

78. Although other portions of ERISA section 3(33)(C) address, among other matters, who can be *participants* in Church Plans—in other words, which employees can be in Church Plans, etc.—these other portions of ERISA section 3(33)(C) do not allow any other type of *plan* to be a Church Plan. 29 U.S.C. § 1002(33)(C). The only two types of plans that can qualify as Church Plans are those described in ERISA section 3(33)(A) and in section 3(33)(C)(i). 29 U.S.C. §§ 3(33)(A) and (C)(i). The Saint Peter's Plan does not qualify as a Church Plan under either ERISA section

3(33)(A) or section 3(33)(C)(i). 29 U.S.C. §§ 3(33)(A) or (C)(i).

79. First, under ERISA section 3(33)(A), a Church Plan is "a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26." ERISA § 3(33)(A), 29 U.S.C. § 1002(33)(A).

80. The Saint Peter's Plan at issue here is not a Church Plan as defined in ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A), because the Saint Peter's Plan was established and maintained by Saint Peter's for its own employees. Because Saint Peter's is not a church or a convention or association of churches, nor does it claim to be, the Saint Peter's Plan was not "established and maintained by" a church or by a convention or association of churches and was not maintained for employees of any church or convention or association of churches. That is the end of the inquiry under ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A).

81. Second, under ERISA section 3(33)(C)(i), a Church Plan also includes a plan "established" by a church or by a convention or association of churches that is "maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

82. The Saint Peter's Plan is not a Church Plan as defined in ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), because the Saint Peter's Plan was not "established" by a church or by a convention or association of churches. Moreover, the Saint Peter's Plan does not qualify as a "Church Plan" under section 3(33)(C)(i) because it is maintained by Saint Peter's, whose principal purpose or function is not the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both. Instead, the principal purpose of Saint Peter's is to own and operate hospitals and healthcare related entities. This ends any argument that the Saint Peter's Plan could be a Church Plan under ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

83. However, even if the Saint Peter's Plan had been "established" by a church and even if the principal purpose or function of Saint Peter's was the administration or funding of the Saint Peter's Plan (instead of running a hospital conglomerate), the Saint Peter's Plan still would not qualify as a Church Plan under ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), because the principal purpose of the Plan is not to provide retirement or welfare benefits *to employees of a church or convention or association of churches*. Participants in the Saint Peter's Plan work for Saint Peter's, a non-profit hospital system. Saint Peter's is not a church or convention or association of churches, and its employees are not employees of a church or convention or association of churches.

84. Under ERISA section 3(33)(C)(ii), 29 U.S.C. § 1002(33)(C)(ii), however, an employee of a tax-exempt organization that is controlled by or associated with a church or a convention or association of churches may also be considered an employee of a

church. But the Saint Peter's Plan also fails this part of the definition, because Saint Peter's is not controlled by or associated with a church or a convention or association of churches within the meaning of ERISA.

85. Though this fact may be disputed by Saint Peter's, Saint Peter's is not an entity that is controlled by a church or convention or association of churches. Saint Peter's is not operated by the Catholic Church and does not receive funding from the Catholic Church.[2]

86. Moreover, Saint Peter's is not "associated with" a church or convention or association of churches within the meaning of ERISA section 3(33)(C)(i), (ii). 29 U.S.C. § 1002(33)(C)(i), (ii). Under ERISA section 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), an organization "is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches." Saint Peter's does not share common religious bonds and convictions with a church or association of churches. Instead, it purports to share only some religious convictions with the Catholic Church, while deliberately choosing to distance itself from, and/or deny, other religious convictions of the Catholic Church when it is in its economic interest to do so, such as when it hires employees, sponsors a medical residency program that includes instruction of procedures forbidden by the Catholic Church, invests in various business

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[2] Notably, if Saint Peter's was "controlled by" the Catholic Church, then the Catholic Church itself would be exposed to significant potential liability stemming from medical malpractice and other legal claims related to the provision of medical care by Saint Peter's.

enterprises, encourages divergent and contrary spiritual support to its patients, and collaborates with medical institutions that claim no religious affiliation of any kind.

87. The Catholic Church insists, for example, that the mystery of Christ be a part of every facet of a Catholic healthcare ministry, including by animating health care with the Gospel of Jesus Christ and seeing death as an opportunity to have communion with Christ. Further, the Catholic Church requires that its healthcare employees, *as a condition of employment*, agree that their services be animated by the Gospel of Jesus Christ. Saint Peter's, however, specifically chooses not to make animation of healthcare through the Gospel of Jesus Christ a condition of employment. In fact, Saint Peter's does not make the Catholic faith a factor in the hiring process of employees. Instead, Saint Peter's recruits and hires from the greatest employment pool possible—one not restricted by any faith—in an attempt to hire the most qualified healthcare workers. Saint Peter's itself sponsors a medical residency program that includes instruction in tubal ligation and contraception—practices that are considered immoral, illegal and evil by the Catholic Church. Saint Peter's owns an insurance company incorporated in the Cayman Islands and a debt collection company, neither of which claim to be animated by the Gospel of Jesus Christ. Perhaps most unlike a church, Saint Peter's *encourages* its clients to seek the faith of their own choosing, including Judaism, Hinduism and other faiths that the Catholic Church views as clear error. So while Saint Peter's may purport to share common religious bonds and convictions with the Catholic Church, it in fact only *selectively chooses to share a bare few such bonds and*

convictions, and ignores or abandons Catholic convictions when it is in its economic interest to do so.

88. Accordingly, Saint Peter's is not "associated with" the Catholic Church within the meaning of ERISA section 3(33)(C)(iv), 29 U.S.C. § 1002(33)(C)(iv), and thus its employees are not "employees" of a church or a convention or association of churches within the meaning of ERISA section 3(33)(C)(ii), 29 U.S.C. § 1002(33)(C)(ii). Because the Saint Peter's Plan was not established and maintained for the provision of retirement benefits for "employees of a church or convention or association of churches," the Saint Peter's Plan fails to qualify as a "Church Plan" under ERISA section 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

89. The Saint Peter's Plan further fails to satisfy the requirements of ERISA section 3(33)(C)(i) because this section requires the organization that maintains the plan to be "controlled by or associated with" a church or convention or associations of churches within the meaning of ERISA. 29 U.S.C. § 1002(33)(C)(i). Thus, even if (1) the church had "established" the Saint Peter's Plan (which it did not); (2) the principal purpose of function of Saint Peter's was the administration and funding of the Saint Peter's Plan (instead of running a hospital system); and (3) Saint Peter's employees were employees of a church or a convention or association of churches (which they are not), the Saint Peter's Plan still would not qualify as a Church Plan under ERISA section 3(33)(C)(i) because–for the reasons outlined above –Saint Peter's is not *controlled by or associated with* a church or convention or association of churches with the meaning of ERISA. 29 U.S.C. § 1002(33)(C)(i).

90. Finally, even if Saint Peter's were "controlled by or associated with" a church, and thus its employees

were deemed "employees" of a church under ERISA section 3(33)(C)(ii)(2), and even if the Saint Peter's Plan was "maintained by" either a church or "pension board" satisfying the requirements of ERISA section 3(33)(C)(i), the Saint Peter's Plan would still not be a "Church Plan" because *all* "Church Plans" must be "established" by a church or by a convention or association of churches. 29 U.S.C. § 1002(33)(A), (C)(i). Although a church may be deemed an "employer" of the employees of the organization that it "controls" or with which it is "associated," *see* ERISA section 3(33)(C)(iii), 29 U.S.C. § 1002(33)(C)(iii), nothing in ERISA provides that the church may be deemed to have "established" a retirement plan that was in fact established by the "controlled" or "associated" organization. Accordingly, because Saint Peter's established the Saint Peter's Plan, the plan cannot be a "Church Plan" within the meaning of ERISA.

b. Even *if* the Saint Peter's Plan Could Otherwise Qualify as a Church Plan under ERISA Section 3(33)(A) or(C)(i), It is Excluded From Church Plan Status under ERISA Section 3(33)(B)(ii)

91. Under ERISA section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii), a plan is specifically excluded from Church Plan status if less than substantially all of the plan participants are members of the clergy or employed by an organization controlled by or associated with a church or convention or association of churches. In this case, there are more than 4,700 participants in the Saint Peter's Plan, and very nearly all of them are or were non-clergy healthcare workers.

92. If the more than 4,700 participants in the Saint Peter's Plan do not work for an organization that is controlled by or associated with a church or convention

or association of churches, then even if the Saint Peter's Plan could otherwise qualify as a Church Plan under ERISA section 3(33)(A), 29 U.S.C. § 1002(33)(A), they still would be foreclosed from Church Plan status under section 3(33)(B)(ii), 29 U.S.C. § 1002(33)(B)(ii).

93. As set forth above, Saint Peter's is not controlled by a church or association of churches, nor does it share common religious bonds and convictions with a church or association of churches. Instead, it purports to share only some religious convictions with the Catholic Church, while deliberately choosing to distance itself from, and/or deny, other religious convictions of the Catholic Church, when it is in its economic interest to do so.

c. Even *if* the Saint Peter's Plan Could Otherwise Qualify as a Church Plan under ERISA, the Church Plan Exemption, as Claimed By Saint Peter's, Violates the Establishment Clause of the First Amendment of the Constitution, and Is Therefore Void and Ineffective

94. The Church Plan exemption is an accommodation *for churches* that establish and maintain pension plans, and it allows such plans to be exempt from ERISA. As set forth in more detail below in Count VIII, the extension of that accommodation to Saint Peter's, which is not a church, violates the Establishment Clause because it harms Saint Peter's workers, puts Saint Peter's competitors at an economic disadvantage, and relieves Saint Peter's of no genuine religious burden created by ERISA. Accordingly, the Church Plan exemption, as claimed by Saint Peter's, is void and ineffective.

VII. CLASS ALLEGATIONS

95. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and the following class of persons similarly situated: All participants or beneficiaries of any Plan operated as or claimed by Saint Peter's to be a Church Plan as of the date of the filing of this Complaint. Excluded from the Class are any high-level executives at Saint Peter's or any employees who have responsibility or involvement in the administration of the Plan, or who are subsequently determined to be fiduciaries of the Saint Peter's Plan, including the Individual Defendants.

A. Numerosity

96. The exact number of Class members is unknown to Plaintiff at this time, but may be readily determined from records maintained by Saint Peter's. Saint Peter's currently employs more than 2,800 individuals and there were over 4,700 participants whose benefits in the Saint Peter's pension plan had vested when Saint Peter's made public its intention to convert to a church plan. Upon information and belief, many of Saint Peter's current and former employees and their beneficiaries are likely members of the Class, and thus the Class is so numerous that joinder of all members is impracticable.

B. Commonality

97. The issues regarding liability in this case present common questions of law and fact, with answers that are common to all members of the Class, including (1) whether the Plan meets the definition of ERISA-covered Plan or are exempt from ERISA as Church Plan, and, if not, (2) whether the fiduciaries of

the Plan have failed to administer and fund the Plan in accordance with ERISA.

98. The issues regarding the relief are also common to the members of the Class as the relief will consist of (1) a declaration that the Plan is an ERISA covered plan; (2) an order requiring that the Plan comply with the administration and funding requirements of ERISA; and (3) an order requiring Saint Peter's to pay civil penalties to the Class, in the same statutory daily amount for each member of the Class.

C. Typicality

99. Plaintiff's claims are typical of the claims of the other members of the Class because his claims arise from the same event, practice and/or course of conduct, namely Defendants' failure to maintain the Plan in accordance with ERISA. Plaintiff's claims are also typical because all Class members are similarly affected by Defendants' wrongful conduct.

100. Plaintiff's claims are also typical of the claims of the other members of the Class because, to the extent Plaintiff seeks equitable relief, it will affect all Class members equally. Specifically, the equitable relief sought consists primarily of (i) a declaration that the Saint Peter's Plan is not a Church Plan; and (ii) a declaration that the Saint Peter's Plan is an ERISA covered plan that must comply with the administration and funding requirements of ERISA. In addition, to the extent Plaintiff seeks monetary relief, it is for civil fines to the Class in the same statutory daily amount for each member of the Class.

101. Saint Peter's does not have any defenses unique to Plaintiff's claims that would make Plaintiff's claims atypical of the remainder of the Class.

D. Adequacy

102. Plaintiff will fairly and adequately represent and protect the interests of all members of the Class.

103. Plaintiff does not have any interests antagonistic to or in conflict with the interests of the Class.

104. Defendant Saint Peter's and the Individual Defendants have no unique defenses against Plaintiff that would interfere with Plaintiff's representation of the Class.

105. Plaintiff has engaged counsel with extensive experience prosecuting class actions in general and ERISA class actions in particular.

E. Rule 23(b)(1) Requirements.

106. The requirements of Rule 23(b)(1)(A) are satisfied because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants.

107. The requirements of Rule 23(b)(1)(B) are satisfied because adjudications of these claims by individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede the ability of other members of the Class to protect their interests.

F. Rule 23(b)(2) Requirements.

108. Class action status is also warranted under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

G. Rule 23(b)(3) Requirements.

109. If the Class is not certified under Rule 23(b)(1) or (b)(2) then certification under (b)(3) is appropriate because questions of law or fact common to members of the Class predominate over any questions affecting only individual members. The common issues of law or fact that predominate over any questions affecting only individual members include: (1) whether the Plan is exempt from ERISA as Church Plan, and, if not, (2) whether the fiduciaries of the Plan have failed to administer and fund the Plan in accordance with ERISA; and (3) whether the Church Plan exemption, as claimed by Saint Peter's, violates the Establishment Clause of the First Amendment. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

A. Individual class members do not have an interest in controlling the prosecution of these claims in individual actions rather than a class action because the equitable relief sought by any Class member will either inure to the benefit of the Plan or affect each class member equally;

B. Individual Class members also do not have an interest in controlling the prosecution of these claims because the monetary relief that they could seek in any individual action is identical to the relief that is being sought on their behalf herein;

C. There is no other litigation begun by any other Class members concerning the issues raised in this litigation;

D. This litigation is properly concentrated in this forum, which is where Defendant Saint Peter's is headquartered; and

E. There are no difficulties managing this case as a class action.

VIII. CAUSES OF ACTION

COUNT I

(Claim for Equitable Relief Pursuant to ERISA Section 502(A)(3) Against Defendant Saint Peter's)

110. Plaintiff repeats and re-alleges the allegations contained in all foregoing paragraphs herein.

111. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a participant or beneficiary to bring a civil action to obtain "appropriate equitable relief. . . to enforce any provisions of this title." Pursuant to this provision, and 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57, Plaintiff seeks declaratory relief that the Saint Peter's Plan is not a Church Plan within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33), and thus is subject to the provisions of Title I and Title IV of ERISA.

112. ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), also authorizes a participant or beneficiary to bring a civil action to "(A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." Pursuant to these provisions, Plaintiff seeks orders directing the Saint Peter's Plan's sponsor and administrator, Saint Peter's, to bring the Saint Peter's Plan into compliance with ERISA, including the reporting,

vesting, and funding requirements of Parts 1, 2 and 3 of ERISA, 29 U.S.C. §§ 1021 31, 1051-61, 1081-85.

113. As the Saint Peter's Plan is not a Church Plan within the meaning of ERISA section 3(33), 29 U.S.C. § 1002(33), and meets the definition of a pension plan under ERISA section 3(2), 29 U.S.C. § 1002(2), the Saint Peter's Plan should be declared to be an ERISA-covered pension plan, and the Saint Peter's Plan sponsor, Saint Peter's, should be ordered to bring the Saint Peter's Plan into compliance with ERISA, including by remedying the violations set forth below.

COUNT II

(Claim for Violation of Reporting and Disclosure Provisions Against Defendant Saint Peter's)

114. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

A. Summary Plan Descriptions

115. Since at least 2006, Saint Peter's has failed to provide Plaintiff or any member of the Class with a Summary Plan Description with respect to the Saint Peter's Plan that meets the requirements of ERISA section 102, 29 U.S.C. § 1022, and the regulations promulgated thereunder.

116. Because Saint Peter's has been the Plan Administrator of the Plan at all relevant times, it violated ERISA section 104, 29 U.S.C. § 1024, by failing to provide Plaintiff and members of the Class with adequate Summary Plan Descriptions.

B. Annual Reports

117. Since at least 2006, Saint Peter's has failed to file an annual report with respect to the Saint Peter's Plan with the Secretary of Labor in compliance with ERISA section 103, 29 U.S.C. § 1023, or a Form 5500 and associated schedules and attachments which the Secretary has approved as an alternative method of compliance with ERISA section 103, 29 U.S.C. § 1023.

118. Because Saint Peter's has been the Plan Administrator of the Saint Peter's Plan at all relevant times, Saint Peter's has violated ERISA section 104(a), 29 U.S.C. § 1024(a), by failing to file annual reports with respect to the Saint Peter's Plan with the Secretary of Labor in compliance with ERISA section 103, 29 U.S.C. § 1023, or Form 5500s and associated schedules and attachments that the Secretary has approved as an alternate method of compliance with ERISA section 103, 29 U.S.C. § 1023.

C. Summary Annual Reports

119. Since at least 2006, Saint Peter's has failed to furnish Plaintiff or any member of the Class with a Summary Annual Report with respect to the Saint Peter's Plan in compliance with ERISA section 104(b)(3) and regulations promulgated thereunder. 29 U.S.C. § 1024(b)(3).

120. Because Saint Peter's has been the Plan Administrator of the Saint Peter's Plan at all relevant times, Saint Peter's has violated ERISA section 104(b)(3), 29 U.S.C. § 1024(b)(3), by failing to furnish Plaintiff or any member of the Class with a Summary Annual Report with respect to the Saint Peter's Plan in compliance with ERISA section 104(b)(3) and regulations promulgated thereunder. 29 U.S.C. § 1024(b)(3).

D. Notification of Failure to Meet Minimum Funding

121. At no time has Saint Peter's furnished Plaintiff or any member of the Class with a Notice with respect to the Saint Peter's Plan pursuant to ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1), informing them that Saint Peter's had failed to make payments required to comply with ERISA section 302, 29 U.S.C. § 1082, with respect to the Saint Peter's Plan.

122. Defendant Saint Peter's has been the employer that established and/or maintained the Saint Peter's Plan.

123. Since at least 2006, Defendant Saint Peter's has failed to fund the Saint Peter's Plan in accordance with ERISA section 302, 29 U.S.C. § 1082.

124. As the employer maintaining the Saint Peter's Plan, Defendant Saint Peter's has violated ERISA section 302, 29 U.S.C. § 1082, by failing to fund the Saint Peter's Plan, is liable for its own violations of ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1), and as such may be required by the Court to pay Plaintiff and each class member up to $110 per day (as permitted by 29 C.F.R. section 2575.502(c)(3)) for each day that Defendant has failed to provide Plaintiff and each Class member with the notice required by ERISA section 101(d)(1), 29 U.S.C. § 1021(d)(1).

E. Funding Notices

125. At no time has Saint Peter's furnished Plaintiff or any member of the Class with a Funding Notice with respect to the Saint Peter's Plan pursuant to ERISA section 101(f), 29 U.S.C. § 1021(f).

126. At all relevant times, Defendant Saint Peter's has been the administrator of the Saint Peter's Plan.

127. As the administrator of the Saint Peter's Plan, Defendant Saint Peter's has violated ERISA section 101(f) by failing to provide each participant and beneficiary of the Saint Peter's Plan with the Funding Notice required by ERISA section 101(f), and as such may be required by the Court to pay Plaintiff and each class member up to $110 per day (as permitted by 29 C.F.R. section 2575.502(c)(3)) for each day that Defendant has failed to provide Plaintiff and each Class member with the notice required by ERISA section 101(f). 29 U.S.C. § 1021(f).

F. Pension Benefit Statements

128. Since at least 2006, Saint Peter's has not furnished Plaintiff or any member of the Class with a Pension Benefit Statement with respect to the Saint Peter's Plan pursuant to ERISA section 105(a)(1), 29 U.S.C. § 1025(a)(1).

129. At all relevant times, Defendant Saint Peter's has been the administrator of the Saint Peter's Plan.

130. As the administrator of the Saint Peter's Plan, Defendant Saint Peter's has violated ERISA section 105(a)(1) and as such may be required by the Court to pay Plaintiff and each Class member up to $110 per day (as permitted by 29 C.F.R. section 2575.502(c)(3)) for each day that Defendant has failed to provide Plaintiff and each Class member with the Pension Benefit Statements required by ERISA section 105(a)(1). 29 U.S.C. § 1025(a)(1).

COUNT III

(Claim for Failure to Provide Minimum Funding Against Defendant Saint Peter's)

131. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

132. ERISA section 302, 29 U.S.C. § 1082, establishes minimum funding standards for defined benefit plans that require employers to make minimum contributions to their plans so that each plan will have assets available to fund plan benefits if the employer maintaining the plan is unable to pay benefits out of its general assets.

133. As the employer maintaining the Plan, Saint Peter's was responsible for making the contributions that should have been made pursuant to ERISA section 302, 29 U.S.C. § 1082, at a level commensurate with that which would be required under ERISA.

134. Since at least 2006, Saint Peter's has failed to make contributions in satisfaction of the minimum funding standards of ERISA section 302, 29 U.S.C. § 1082.

135. By failing to make the required contributions to the Saint Peter's Plan, either in whole or in partial satisfaction of the minimum funding requirements established by ERISA section 302, Defendant Saint Peter's has violated ERISA section 302. 29 U.S.C. § 1082.

COUNT IV

(Claim for Failure to Establish the Plan Pursuant to a Written Instrument Meeting the Requirements of ERISA Section 402AgainstDefendantSaintPeter's)

136. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

137. ERISA section 402, 29 U.S.C. § 1102, provides that every plan will be established pursuant to a written instrument which will provide among other things "for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan" and will "provide a procedure for establishing and carrying out a funding policy and method constituent with the objectives of the plan and the requirements of [Title I of ERISA]."

138. Although the benefits provided by the Saint Peter's Plan were described to the employees and retirees of Saint Peter's (and/or its affiliates and subsidiaries) in various written communications, the Saint Peter's Plan has not been established pursuant to a written instrument meeting the requirements of ERISA section 402, 29 U.S.C. § 1102.

139. As Defendant Saint Peter's has been responsible for maintaining the Saint Peter's Plan and has amendment power over the Saint Peter's Plan, Defendant Saint Peter's violated section 402 by failing to promulgate written instruments in compliance with ERISA section 402 to govern the Saint Peter's Plan operations and administration. 29 U.S.C. § 1102.

COUNT V

(Claim for Failure to Establish a Trust Meeting the Requirements of ERISA Section 402 Against Defendant Saint Peter's)

140. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

141. ERISA section 403, 29 U.S.C. § 1103, provides, subject to certain exceptions not applicable here, that all assets of an employee benefit plan shall be held in trust by one or more trustees, that the trustees shall be either named in the trust instrument or in the plan instrument described in section 402(a), 29 U.S.C. § 1102(a), or appointed by a person who is a named fiduciary.

142. Although the Saint Peter's Plan assets have been held in trust, the trust does not meet the requirements of ERISA section 403, 29 U.S.C. § 1103.

143. As Defendant Saint Peter's has been responsible for maintaining the Saint Peter's Plan and has amendment power over the Saint Peter's Plan, Defendant Saint Peter's violated section 403 by failing to put the Saint Peter's Plan assets in trust in compliance with ERISA section 403. 29 U.S.C. § 1103.

COUNT VI

(Claim for Civil Money Penalty Pursuant to ERISA Section 502(a)(1)(A) Against Defendant Saint Peter's)

144. Plaintiff incorporates and re-alleges by reference the foregoing paragraphs as if fully set forth herein.

145. ERISA section 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A), provides that a participant may bring a civil action for the relief provided in ERISA section 502(c), 29 U.S.C. § 1132(c).

146. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R. section 2575.502c-3, provides that an employer maintaining a plan who fails to meet the notice requirement of ERISA section 101(d), 29 U.S.C. § 1021(d), with respect to any participant and beneficiary may be liable for up to $110 per day from the date of such failure.

147. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R. section 2575.502c-3, provides that an administrator of a defined benefit pension plan who fails to meet the notice requirement of ERISA section 101(f), 29 U.S.C. § 1021(f), with respect to any participant and beneficiary may be liable for up to $110 per day from the date of such failure.

148. ERISA section 502(c)(3), 29 U.S.C. § 1132(c)(3), as provided in 29 C.F.R. section 2575.502c-3, provides that an administrator of a defined benefit pension plan who fails to provide a Pension Benefit Statement at least once every three years to a participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is to be furnished as required by ERISA section 105(a), 29 U.S.C. § 1025(a), may be liable for up to $110 per day from the date of such failure.

149. As Defendant Saint Peter's is the employer maintaining the Saint Peter's Plan and the Saint Peter's Plan Administrator and has failed to give the notices required by ERISA section 101(d) and (f), 29 U.S.C. § 1021(d) and (f), and the Pension Benefit Statement required by ERISA section 105(a), 29

U.S.C. § 1025(a), as set forth in Count II Subparts D through F, Defendant Saint Peter's is liable to Plaintiff and each member of the Class in an amount up to $110 per day from the date of such failures until such time that notices are given and the statement is provided, as the Court, in its discretion, may order.

COUNT VII

(Claim for Breach of Fiduciary Duty Against All Defendants)

150. Plaintiff incorporates and realleges by reference the foregoing paragraphs as if fully set forth herein.

151. Plaintiff brings this Count VII for breach of fiduciary duty pursuant to ERISA section 502(a)(2), 29 U.S.C. § 1132(a)(2).

A. Breach of the Duty of Prudence and Loyalty

152. ERISA section 404(a)(1), 29 U.S.C. § 1104(a)(1), provides in pertinent part that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

(a) for the exclusive purpose of:

(i) providing benefits to participants and beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims . . . [and]

> (c) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this [title I of ERISA] and title IV.

153. As fiduciaries with respect to the Saint Peter's Plan, Defendants had the authority to enforce each provision of ERISA alleged to have been violated in the foregoing paragraphs pursuant to ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3). Having the authority to enforce the provisions of ERISA at those respective times, ERISA section 404(a)(1)(A)-(D), 29 U.S.C. § 1104(a)(1)(A)-(D), imposed on Defendants the respective duty to enforce those provisions in the interest of the participants and beneficiaries of the Saint Peter's Plan during the times that each was a fiduciary of the Saint Peter's Plan.

154. Since at least 2006, Defendants have not enforced any of the provisions of ERISA set forth in Counts I-V with respect to the Saint Peter's Plan.

155. By failing to enforce the provisions of ERISA set forth in Counts I-V, Defendants breached the fiduciary duties that they owed to Plaintiff and the Class.

156. The failure of Defendants to enforce the funding obligations owed to the Plan has resulted in a loss to the Saint Peter's Plan equal to the foregone funding and earnings thereon, and profited Defendant Saint Peter's by providing it the use of money owed to the Saint Peter's Plan for its general business purposes.

B. Prohibited Transactions

157. ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), prohibits a fiduciary with respect to a plan from directly or indirectly causing a plan to extend credit to a party in interest, as defined in ERISA section 3(14), 29 U.S.C. § 1002(14), if he or she knows or should know that such transaction constitutes an extension of credit to a party in interest.

158. ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits a fiduciary with respect to a plan from directly or indirectly causing a plan to use assets for the benefit of a party in interest, if he or she knows or should know that such transaction constitutes a use of plan assets for the benefit of a party in interest.

159. ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1), prohibits the use of plan assets by a fiduciary with respect to a plan in his or her own interest or for his or her own account.

160. As fiduciaries with respect to the Plan and, with respect to Saint Peter's, as an employer of employees covered by the Plan, and, with respect to Defendants Rak, Ballestero and Stoldt, as Officers of Saint Peter's, the Defendants at all relevant times were parties in interest with respect to the Saint Peter's Plan pursuant to ERISA section 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C).

161. By failing to enforce the funding obligations created by ERISA and owed to the Plan, Defendants extended credit from the Saint Peter's Plan to Saint Peter's in violation of ERISA section 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), when Defendants knew or should have known that their failure to enforce the funding obligation constituted such an extension of credit.

162. By failing to enforce the funding obligations created by ERISA and owed to the Saint Peter's Plan, Defendants used Saint Peter's Plan assets for Saint Peter's own benefit, when Defendants knew or should have known that their failure to enforce the funding obligations constituted such a use of Saint Peter's Plan assets, in violation of ERISA section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

163. By failing to enforce the funding obligations created by ERISA and owed to the Saint Peter's Plan, Defendants used Saint Peter's Plan assets in Saint Peter's interest in violation of ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1).

164. The failure of Defendants to enforce the funding obligations owed to the Saint Peter's Plan has resulted in a loss to the Saint Peter's Plan equal to the foregone funding and earnings thereon.

165. The failure of Defendants to enforce the funding obligations owed to the Saint Peter's Plan has profited Defendant Saint Peter's by providing it the use of money owed to the Saint Peter's Plan for its general business purposes.

COUNT VIII
(Claim for Declaratory Relief That the Church Plan Exemption, as Claimed By Saint Peter's, Violates the Establishment Clause of the First Amendment of the Constitution, and Is Therefore Void and Ineffective)

166. Plaintiff incorporates and realleges by reference the foregoing paragraphs as if fully set forth herein.

167. The Establishment Clause of the First Amendment of the Constitution mandates governmental

neutrality between religion and nonreligion. U.S. Const. Amend. I. The ERISA Church Plan exemption is an accommodation that exempts churches and associations of churches, under certain circumstances, from compliance with ERISA. The ERISA Church Plan exemption, as claimed by Saint Peter's, is an attempt to extend the accommodation beyond churches and associations of churches, to Saint Peter's—a non-profit hospital conglomerate. That extension violates the Establishment Clause because it harms Saint Peter's workers, puts Saint Peter's competitors at an economic disadvantage, and relieves Saint Peter's of no genuine religious burden created by ERISA.

A. Workers are Harmed. Employers, including Saint Peter's, legally are not required to provide pensions; instead, they choose to provide pensions in order to reap tax rewards and attract and retain employees in a competitive labor market. Saint Peter's hires without regard to the religious faith of prospective employees; indeed, any choice of faith, or lack thereof, is not a factor in the recruiting and hiring of Saint Peter's employees. Thus, as a practical matter, and by Saint Peter's own design, its pension plan participants include people of a vast number of divergent faiths, as well as those who belong to no faith. To be constitutional, an accommodation such as the Church Plan exemption must not impose burdens on nonadherents without due consideration of their interests. The Church Plan exemption, as invoked by Saint Peter's, places its longtime employees' justified reliance on their pension benefits at great risk, including because the Plan is underfunded by over $70 million. In addition, Saint Peter's fails to provide the multitude of

other ERISA protections designed to safeguard the pensions. The Church Plan exemption, as applied by Saint Peter's, provides no consideration of the harm to Saint Peter's more than 4,700 Plan participants, including all of those that are non-Catholic.

B. Rivals are Disadvantaged. Saint Peter's commercial rivals face substantial disadvantages in their competition with Saint Peter's because the rivals must use their current assets to fully fund their pension plan obligations and provide the other ERISA protections. To be constitutional, an accommodation such as the Church Plan exemption must take adequate account of any disadvantage it creates for nonbeneficiaries. The Church Plan exemption, as applied by Saint Peter's, provides no consideration of the disadvantage it creates for Saint Peter's competitors.

C. No Genuine Religious Burden is Relieved. Saint Peter's claims the Church Plan exemption to lighten its pension obligations and liabilities, not to adhere to a religious faith. To be constitutional, an accommodation such as the Church Plan exemption, which exempts compliance with ERISA, must relieve a genuine burden upon the recipient's *religious practice*. The Church Plan exemption, as claimed by Saint Peter's, responds to no genuine burden created by ERISA on any Saint Peter's religious practice.

168. Plaintiff seeks a declaration by the Court that the Church Plan exemption, as claimed by Saint Peter's, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against the Defendants on all claims and requests that the Court award the following relief:

A. Declaring that the Saint Peter's Plan is an employee benefit plan within the meaning of ERISA section 3(2), 29 U.S.C. § 1002(2), is a defined benefit pension plan within the meaning of ERISA section 3(35), 29 U.S.C. § 1002(35), and is not a Church Plan within the definition of section 3(33) of ERISA, 29 U.S.C. § 1002(33). Ordering Saint Peter's to reform the Saint Peter's Plan to bring the Saint Peter's Plan into compliance with ERISA and to have the Saint Peter's Plan comply with ERISA including as follows:

1. Revising Plan documents to reflect that the Plan is a defined benefit plan regulated by ERISA.

2. Requiring Saint Peter's to fund the Saint Peter's Plan in accordance with ERISA's funding requirements, disclose required information to the Saint Peter's Plan participants and beneficiaries, and otherwise comply with all other reporting, vesting, and funding requirements of Parts 1, 2 and 3 of Title I of ERISA, 29 U.S.C. §§ 1021-31, 1051-61, 1081-85.

3. Reforming the Saint Peter's Plan to comply with ERISA's vesting and accrual requirements and providing benefits in the form of a qualified joint and survivor annuity.

4. Requiring the adoption of an instrument governing the Saint Peter's Plan that complies with ERISA section 402, 29 U.S.C. § 1102.

5. Requiring Saint Peter's to comply with ERISA reporting and disclosure requirements, including by filing Form 5500 reports, distributing ERISA-compliant Summary Plan Descriptions, Summary Annual Reports and Participant Benefit Statements, and providing Notice of the Saint Peter's Plan funding status and deficiencies.

6. Requiring the establishment of a Trust in compliance with ERISA section 403, 29 U.S.C. § 1103.

B. Requiring Saint Peter's, as a fiduciary of the Plan, to make the Saint Peter's Plan whole for any losses and disgorge any Saint Peter's profits accumulated as a result of fiduciary breaches.

C. Appointing an Independent Fiduciary to hold the Saint Peter's Plan assets in trust, to manage and administer the Saint Peter's Plan and their assets, and to enforce the terms of ERISA.

D. Requiring Saint Peter's to pay a civil money penalty of up to $110 per day to Plaintiff and each Class member for each day it failed to inform Plaintiff and each Class member of its failure to properly fund the Plan.

E. Requiring Saint Peter's to pay a civil money penalty of up to $110 per day to Plaintiff and each Class member for each day it failed to provide Plaintiff and each Class member with a Funding Notice.

F. Requiring Saint Peter's to pay a civil money penalty of up to $110 per day to Plaintiff and each Class member for each day it failed to provide a benefit statement under ERISA section 105(a)(1)(B), 29 U.S.C. § 1025(a)(1)(B).

G. Ordering declaratory and injunctive relief as necessary and appropriate, including enjoining the Defendants from further violating the duties, responsibilities, and obligations imposed on them by ERISA, with respect to the Saint Peter's Plan.

G. Declaring with respect to Count VIII, that the Church Plan exemption, as claimed by Saint Peter's, is an unconstitutional accommodation under the Establishment Clause of the First Amendment, and is therefore void and ineffective.

I. Awarding to Plaintiff attorneys' fees and expenses as provided by the common fund doctrine, ERISA section 502(g), 29 U.S.C. § 1132(g) and/or other applicable doctrine.

J. Awarding to Plaintiff taxable costs pursuant to ERISA section 502(g), 29 U.S.C. § 1132(g), 28 U.S.C. § 1920, and other applicable law.

K. Awarding to Plaintiff pre-judgment interest on any amounts awarded pursuant to law.

L. Awarding, declaring or otherwise providing Plaintiff and the Class all relief under ERISA section 502(a), 29 U.S.C. § 1132(a), or any other applicable law, that the Court deems proper.

DATED May 7, 2013.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Hon. Michael A. Shipp, U.S.D.J.
Hon. Tonianne J. Bongiovanni, U.S.M.J.

(Electronically Filed Document)

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Defendants Saint Peter's Healthcare System, Ronald C. Rak, Susan Ballestero, and Garrick Stoldt (collectively, "Defendants") through their attorneys, Sills Cummis & Gross P.C., state in answer to the Class Action Complaint of Laurence Kaplan, on behalf of himself, individually, and on behalf of all others similarly situated (the "Complaint"), as follows:

I. IDENTIFICATION OF PARTIES (LOCAL RULE 10.1)

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and on that basis deny the allegations of paragraph 1, except Defendants admit that the principal place of business of Saint

* * *

56. Defendants deny the allegations contained in paragraph 56 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA, except to admit that for a period of time, the Plan operated as if it were an ERISA covered plan and state that Saint Peter's never made an election under Section 410(d) of the Internal Revenue Code to have its Church Plan treated as an ERISA plan.

57. Defendants deny the allegations contained in paragraph 57 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA, except to admit that for a period of time, the Plan operated as if it were an ERISA covered plan and state that Saint Peter's never made an election under Section 410(d) of the Internal Revenue Code to have its Church Plan treated as an ERISA plan.

58. Defendants deny the allegations contained in paragraph 58 of the Complaint, except to admit that it filed an application with the IRS in 2006 to affirm its Church Plan status and paid certain premiums to the PBGC subsequent to its 2006 request to the IRS for a private letter ruling.

59. Defendants deny the allegations contained in paragraph 59 of the Complaint.

60. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint, and on that basis deny the allegations contained in paragraph 60 of the Complaint.

61. Defendants admit the allegations contained in paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in paragraph 62 of the Complaint, except to admit that Saint Peter's established a defined contribution plan operated as an ERISA-covered plan for new employees effective July 1, 2010 and amended it to include all current employees as of January 1, 2013.

63. Defendants admit the allegations contained in paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in paragraph 65 of the Complaint.

66. Defendants deny the allegations contained in paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in paragraph 67 of the Complaint, except to admit that the Plan does not provide for an individual account for each participant and does not provide benefits solely upon the amount contributed to a participant's account.

68. Defendants deny the allegations contained in paragraph 68 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA.

69. Defendants deny the allegations contained in paragraph 69 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA.

70. Defendants deny the allegations contained in paragraph 70 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA.

71. Defendants deny the allegations contained in paragraph 71 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA.

72. Defendants deny the allegations contained in paragraph 72 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA.

73. Defendants deny the allegations contained in paragraph 73 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA.

74. Defendants deny the allegations contained in paragraph 74 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA.

75. Defendants deny the allegations contained in paragraph 75 of the Complaint, as the Plan is a Church Plan, exempt from the requirements of ERISA.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Honorable Michael A. Shipp
United States District Judge

(Electronically Filed Document)

CERTIFICATION OF MONSIGNOR JOHN FELL

Monsignor John Fell hereby certifies as follows

1. I am currently the Episcopal Vicar for the Healthcare Apostolate for the Diocese of Metuchen. I submit this Certification in support of defendants' motion to dismiss the Complaint to address issues raised with respect to the relationship between the Roman Catholic Church (the "Church") and Saint Peter's Healthcare System ("Saint Peter's").

2. I have been a priest of the Church for twenty-five years. In addition, I obtained a Doctorate in Sacred Theology (specifically Moral Theology) from the Accademia Alfonsiana in Rome in 2002, with my dissertation in the area of biomedical ethics.

3. I began my formal relationship with Saint Peter's in 1989 when I was appointed by the Most Reverend Edward Hughes, who was the Bishop of Metuchen at that time, to the Ethics Committee and Infant Bioethics Committee of Saint Peter's University Hospital (the "Hospital"). I was subsequently appointed to the Board of Trustees for the Hospital in 1990, and continued to serve in these positions until 1998 when I started work on my Doctorate. Upon finishing my Doctorate in 2002, I rejoined these roles at the Hospital.

4. I currently serve on the Board of Governors for Saint Peter's, the Board of Trustees for the Hospital, the Ethics Committee, the Infant Bioethics Committee, the Investment Committee, and the Retirement Plan Committee.

5. On March 1, 2010, the Most Reverend Paul G. Bootkowski, the current Bishop of Metuchen (the "Bishop") appointed me as Episcopal Vicar for the Healthcare Apostolate for the Diocese of Metuchen ("Episcopal Vicar") for a three year term, which was subsequently extended until December 31, 2015. A true copy of my appointment letter is attached hereto as Exhibit A. As set forth more fully below, my primary role as Episcopal Vicar is to act as the Bishop's liaison to ensure that Saint Peter's retains its Catholic identity and conforms to the Church's core tenets and values. Accordingly, I am directly and personally responsible, under the Bishop, for the

Church's oversight of Saint Peter's and, in turn, Saint Peter's adherence to Catholic tenets.

Background of the Diocese of Metuchen and Saint Peter's

6. In 1981, Pope John Paul II established the Diocese of Metuchen (the "Diocese"). The four counties that currently make up the Diocese were previously part of the Diocese of Trenton. Like other diocesan bishops, the Bishop of Metuchen reports directly to the Holy See and is subject to the direct authority of the Holy See.

7. The Diocese is a public juridic person under Roman Catholic Canon Law, meaning that it operates as an entity of the Church and exists to carry out the mission of the Church. *See Codex Iuris Canonici*, Code c.113 § 2, c.114 § 1 (1983). All of the assets and property of the Diocese are considered ecclesiastical property owned by the Church. Accordingly, certain property transactions that exceed a pre-approved amount must be approved by the Holy See. Code c. 1292.

8. Since inception, Saint Peter's has been governed by the Church. The Diocese of Trenton founded and incorporated Saint Peter's in 1907 and 1908, and religious orders, including the Grey Nuns of Montreal and the Sister of St. Joseph of Peace, were historically involved with staffing at Saint Peter's.

9. To advance the Church's health ministries, the Diocese is the current sponsor of Saint Peter's. Saint Peter's is incorporated as a nonprofit corporation under the New Jersey Nonprofit Corporation Law, N.J.S.A. 15A:1-1 *et seq.*, with the Bishop as the sole member of the corporation. Using his authority under Canon Law, and his authority as sole member of Saint

Peter's, the Bishop controls all aspects of Saint Peter's performance of its mission to deliver health care to the community in accord with the teachings of the Church.

10. On July 7, 2010, the Bishop issued a Decree that "establish[ed] as particular law for the Diocese of Metuchen the Fifth Edition of the United States Conference of Catholic Bishops' *Ethical and Religious Directives for Catholic Health Care Services*." A true copy of the Bishop's Decree, dated July 7, 2010, is attached hereto as Exhibit B, and a true copy of the Ethical and Religious Directives for Catholic Health Care Services (the "ERDs") is attached to the Certification of Garrick Stoldt (the "*Stoldt Cert.*"), as Exhibit G.

11. The ERDs are promulgated by the U.S. Conference of Catholic Bishops and provide both a reaffirmation of "the ethical standards of behavior in health care that flow from the Church's teaching about the dignity of the human person" and "authoritative guidance on certain moral issues that face Catholic health care today." (*Stoldt Cert.*, Exhibit G, at 4). As a result of the Bishop's Decree, all Catholic health care institutions within the Diocese, including Saint Peter's, are required to abide by the ERDs as Church law.

Saint Peter's Catholic Identity

12. The Catholic identity of Saint Peter's is evident in both the management of Saint Peter's and in the day-to-day operations of Saint Peter's.

13. As detailed in the Certification of Garrick Stoldt, the sole member of Saint Peter's is the Bishop of the Diocese of Metuchen, and the Bylaws of Saint Peter's provide for the appointment of an Episcopal Vicar to the Board of Governors by the Bishop. As

noted in my appointment letter, the Episcopal Vicar receives the Bishop's mandate "to act as [his] liaison with [Saint Peter's], serving on its Board of Trustees [now its Board of Governors] and having primary responsibility for insuring the System's Catholic identity and its conformity with the Church's mission and core values." (*See* Exhibit A.)

14. The purpose of the Episcopal Vicar position is therefore to act as an agent through whom the Bishop exercises his authority over Saint Peter's and to assure that Saint Peter's operates in accord with Catholic doctrine. While I discuss matters of importance to Saint Peter's with the Bishop when appropriate, the Bishop remains directly involved with Saint Peter's and communicates regularly with the management of Saint Peter's.

15. In accord with my mandate from the Bishop, I regularly attend and participate in meetings of the Saint Peter's Board of Governors and the Hospital's Board of Trustees, and advise Saint Peter's in matters related to the adherence to the ERDs.

16. I am also an active member of the Ethics Committee and the Infant Bioethics Committee. These two committees meet regularly to ensure compliance with the ERDs. The Ethics Committee maintains a hotline that allows anyone to report a perceived violation of the ERDs at Saint Peter's. During Ethics Committee meetings, we discuss any reports to the hotline and determine the appropriate response. The ethics committees continually review and revise the policies at Saint Peter's to ensure compliance with the ERDs. I have also provided a monthly class to the medical residents at Saint Peter's on ethical teachings.

17. Thus, it is directly through my position as Episcopal Vicar that I ensure that the management of

Saint Peter's complies with the ERDs of the Church and retains its Catholic identity.

18. The Catholic identity of Saint Peter's is immediately visible upon a visit to the Hospital. Catholic symbolism is present throughout the Hospital, including religious statues and pictures. Crucifixes are also hung in many, if not all, of the rooms.

19. Saint Peter's also provides many Church services for its patients. We offer daily Mass, meditation facilities, and prayer leadership, and provide opportunities for patients to receive the sacrament of reconciliation and the anointing of the sick.

20. We also offer religious celebrations during Mass. In addition to celebrating Catholic Holy Days, we routinely celebrate individuals who are part of the Saint Peter's community during Mass. For example, we hold Mass in honor of our volunteers, veterans, and employees who have reached certain milestone anniversaries in their employment with Saint Peter's.

21. Every morning there is a prayer broadcast over the public address system at the Hospital.

22. Saint Peter's also has a Pastoral Care Department that works to ensure that the patients of Saint Peter's have access to spiritual care, regardless of faith. This department coordinates clergy visits from various faiths in addition to ensuring that Catholic clergy and Eucharistic ministers are available to meet the needs of Catholic patients, including the provision of the sacraments of the sick and reconciliation and the arrangement of daily Mass at the Hospital. In keeping with the ERDs, the Director of the Pastoral Care Department is Catholic. (*Stoldt Cert.*, Exhibit G, Directive 22.)

23. Saint Peter's also remains financially accountable to the Diocese and to the Church. Like most Catholic institutions, if Saint Peter's seeks to engage in an alienation of property above a certain threshold (currently $7 million), Saint Peter's must obtain permission from the Vatican prior to proceeding with that transaction.

24. I understand that the plaintiff in this case makes certain assertions regarding practices at Saint Peter's that he believes are in contradiction to the teachings of the Church. While the Certifications of Garrick Stoldt and Dr. Richard Stewart provide a more detailed response to these claims, I would like to emphasize a few points that relate to the Church's teachings.

25. First, I understand that the plaintiff suggests that the encouragement by Saint Peter's for its patients to seek spiritual guidance in accordance with their own religious practices is in contradiction to the teachings of the Church. On the contrary, the ERDs specifically provide that "[a] Catholic health care organization should provide pastoral care to minister to the religious and spiritual needs of all those it serves." (*Id.*, Directive 10.) The ERDs also provide that "[a]ppropriate pastoral services and/or referrals should be available to all in keeping with their religious beliefs or affiliation." (*Id.*, Directive 11.) The comfort and the healing of the patients are the foremost priorities of Saint Peter's, and thus, the patients should be allowed to practice their own faith while in the care of Saint Peter's. The pastoral care of all, regardless of religion, is part of the healthcare ministry of the Church.

26. Second, I also understand that the plaintiff in this case suggests that the practice of Saint Peter's

to hire employees without regard to religion is also somehow contrary to the teachings of the Church. This too is not correct. The ERDs instruct us that "[a] Catholic health care institution must treat its employees respectfully and justly. This responsibility includes: equal employment opportunities for anyone qualified for the task . . . . " (*Id.*, Directive 7.) This is in keeping with the Church's social teachings, which also provide that discrimination in job opportunities should never be tolerated. *See* United States Conference of Catholic Bishops, Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy (1986), at 17, a true copy of which is attached hereto as Exhibit C. Similarly, with the exception of a few positions that are required to be filled by Catholics, the Diocese also does not discriminate on the basis of religion in its hiring of employees.

27. Third, I understand that the plaintiff suggests that the Saint Peter's Obstetrics and Gynecology Residency Program (the "Program") instructs its residents on procedures that are forbidden by the Church, such as sterilization procedures like tubal litigation and the use of contraception. As detailed in the Certification of Dr. Richard Stewart, the Program does not allow its medical residents to perform any sterilization procedures like tubal ligation in its facilities, nor does it allow its medical residents to dispense contraception or prescribe medication for contraceptive purposes at its facilities. To maintain its accreditation, the Program must provide instruction on contraception and family planning, however, the clinical portion of this education does not take place at Saint Peter's. Accordingly, participation in the Program is consistent with the ERDs, which forbid "*immediate material cooperation* in actions that are intrinsically immoral, such as abortion . . . and direct

sterilization." (*Stoldt Cert.*, Exhibit G, Directive 70 (emphasis added).)

28. Finally, I understand that the plaintiff criticizes Saint Peter's for its collaboration with Drexel University and Children's Hospital of Philadelphia. However, as noted in the Certification of Garrick Stoldt, the ERDs specifically contemplate such partnerships and discuss the potential for benefits from such partnerships, including the advancement of the Church's social teaching and greater opportunities for the Church's health institutions to influence the profession. (*Id.* at 34.) Moreover, I remain involved in monitoring the relationships with Drexel University and Children's Hospital of Philadelphia to ensure compliance with the ERDs.

29. In light of the above, plaintiff's assertions regarding Saint Peter's adherence to the Church's doctrine are incorrect. Saint Peter's follows the ERDs, and in doing so, advances the Catholic faith and its healing ministry.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 8th, 2013.

/s/ John Fell
MONSIGNOR JOHN FELL

[Logo] DIOCESE OF METUCHEN

Office of the Bishop

March 1, 2010

Very Rev. John N. Fell, STD
Our Lady of Perpetual Help Parish
111 Claremont Road
Bernardsville, NJ 07924

Dear Father Fell,

Throughout his public ministry, the Lord Jesus displayed particular compassion for those who were infirm, so that "all who had people sick with various diseases brought them to him" (Lk 6:40). Among the most urgent and complex challenges facing the Church in our time is maintaining the stability and vitality of our Catholic institutions dedicated to being of the Lord's care for the sick.

The faithful in the Diocese of Metuchen who bear the burdens of illness are especially fortunate to be served by the various divisions of St. Peter's Healthcare System, Inc., which faces the same difficulties confronting so many health care institutions. In order to affirm my particular concern and support for St. Peter's mission, and for all those institutions in the Diocese involved in health services, I am pleased hereby to appoint you Episcopal Vicar for the Health Care Apostolate, effective immediately and for a term ending on December 31, 2012.

As Episcopal Vicar for the Health Care Apostolate, you have my mandate:

- to act as my liaison with St. Peter's Healthcare System, Inc., serving on its Board of Trustees and having primary responsibility for insuring

the System's Catholic identity and its conformity with the Church's mission and core values;

- to act as my liaison in matters involving other health care providers serving the faithful of the Diocese; and
- to provide spiritual leadership for the Physicians Guild.

The Church's law specifies that episcopal vicars are to inform the diocesan bishop on "the principal matters" in which they are concerned and are not to act contrary to the bishop's "will and mind" (c. 480).

At your convenience, I ask that you make the required profession of faith in the presence of the vicar general, the chancellor, or the vice-chancellor (c. 833, 5°).

Finally, for as long as you serve as my vicar, I extend to you the privilege of the title "Very Reverend."

With my heartfelt gratitude for assuming these new responsibilities, and with the assurance of my prayers for the success of your important work, I remain

Sincerely in the Lord,

/s/ Paul G. Bootkoski
Most Rev. Paul G. Bootkoski
Bishop of Metuchen

C: Marianne Majewski, LCSW
Ronald C. Rak; Esq.
Jennifer Ruggiero

[Logo]

DECREE

Mindful of my responsibilities as diocesan bishop to safeguard the integrity and unity of the truths of the faith, moral principals, and ecclesiastical discipline in the works of the apostolate pertaining to health care (CIC, cc. 392, 394, 67B, 747), with this decree I hereby establish as particular law for the Diocese of Metuchen the Fifth Edition of the United States Conference of Catholic Bishops' *Ethical and Religious Directives for Catholic Health Care Services* (*Ethical and Religious Directives*).

The manner of promulgating this decree shall be the publication of the *Ethical and Religious Directives* on the diocesan website. Reference to this decree and to the availability of the *Ethical and Religious Directives* is to be made in the diocesan newspaper, the *Catholic Spirit*.

Finally, I direct that this decree and a copy of the *Ethical and Religious Directives* be delivered to the Chief executive officers of all Catholic health care institutions currently operating in the Diocese of Metuchen and any that are established in the Diocese subsequent to this decree and until this decree is no longer in effect.

Given at the Curia of the Diocese of Metuchen, on this seventh day of July, in the Year of Our Lord 2010.

/s/ Paul G. Bootkoski
Most Reverend Paul G. Bootkoski, D.D.
Bishop of Metuchen

/s/ [Illegible]
Notary

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Honorable Michael A. Shipp
United States District Judge

(Electronically Filed Document)

CERTIFICATION OF GARRICK STOLDT

GARRICK STOLDT hereby certifies as follows:

1. I am Vice President and Chief Financial Officer of Saint Peter's Healthcare System, Inc. ("Saint Peter's" or "the Corporation"), a member of its Retirement Plan Committee and a defendant herein. I submit this Certification in support of defendants' motion to dismiss the Complaint.

2. As I understand, the lawsuit challenges the church plan status of Saint Peter's Retirement Plan, a

defined benefit pension plan ("the Plan"). This Certification will show that the Plan meets the requirements of a church plan because, among other things, Saint Peter's and its subsidiaries that participate in the Plan (Saint Peter's University Hospital, New Brunswick Cardiac Catheterization Lab, LLC, Margaret McLaughlin McCarrick Care Center, Inc. and Saint Peter's Foundation) are controlled by or associated with a church, and the Plan is maintained by the Retirement Plan Committee of Saint Peter's, which also is controlled by or associated with a church and whose principal purpose or function is the administration or funding of the Plan and other retirement plans for the employees of Saint Peter's and, as applicable, its subsidiaries. As a church plan, the Plan is not subject to ERISA, because the Retirement Plan Committee has never made an affirmative election, in accordance with Section 410(d) of the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulation Section 1.410(d)-1 issued thereunder, to have ERISA apply to the Plan.

Control

3. Saint Peter's Healthcare System, Inc. (formerly known as Catholic Health New Jersey, Inc.) is a corporation operated exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. More specifically, as stated in its Certificate of Incorporation, among its purposes are "to care, cure, nurture and maintain sick and infirm persons," and "to own, maintain, operate or assist in the operation of one or more Catholic hospitals . . . ." In addition, its corporate charter requires:

> The Corporation shall perform its general and specific corporate purposes in conformity with

> the law, teachings and moral practices of the Roman Catholic Church and in accord with the tenets set forth in the latest edition of the directives entitled "Ethical and Religious Directives for Catholic Health Facilities" approved by the National Conference of Catholic Bishops, and as promulgated by the Bishop of Metuchen for use in his Diocese. [Certif. of Incorp. ¶ 4]

Attached hereto as Exhibit A is a true copy of the March 1, 2010 Certificate of Amendment to the Certificate of Incorporation of Saint Peter's, which also has attached the November 14, 2007 Restated Certification of Incorporation for Saint Peter's Healthcare System, Inc. ("Certif. of Incorp.").

4. The sole member of the Corporation is the Bishop of the Diocese of Metuchen. (*Id.*, Certif. of Incorp. ¶ 9.)

5. The conduct and management of the affairs of the Corporation are vested in its Board of Governors, formerly known as its Board of Trustees (hereinafter, the "Board"). (*Id.*, Certif. of Incorp. ¶ 10; 2007 Certif. of Incorp. 10.) The Corporation's bylaws provide for, among other things, how the Board is appointed, its voting rights, the number of Board members, and their qualifications. (*Id.*, 2010 Certif. of Incorp. ¶ 10; 2007 Certif. of Incorp. ¶ 10.)

6. A true copy of the Corporation's current bylaws, last amended March 1, 2010, is attached hereto as Exhibit B ("bylaws"). The bylaws repeat that the sole member of the Corporation is the Bishop of the Diocese of Metuchen (the "Bishop" or "Member"), and states that he is responsible for ensuring compliance of the Corporation and its subsidiaries with "The Ethical

and Religious Directives for Catholic Health Care Facilities." If there is a vacancy in the position of Bishop, that power is vested in an individual appointed by the Roman Catholic Church. (*Id.*, Bylaws, Article III, Section 1.) The powers of the Bishop are also set forth in the bylaws. (*Id.*, Bylaws, Article III, Section 2.)

7. The Bishop has the power to remove any or all of the Governors of the Board and Trustees of subsidiaries in his sole discretion, with or without cause, at any time, and has the power to veto any action by the Corporation or its Board. (*Id.*, Bylaws, Article III, Sections 2(a) and (e).)

8. The Bishop also has the power to appoint and remove the Chair of the Board, the Vice Chair, the President and Chief Executive Officer, the Treasurer, the Secretary and Assistant Secretary, in his sole discretion, with or without cause, at any time. (*Id.*, Bylaws, Article III, Section 2(b).)

9. With respect to the Board of Governors, the Bishop appoints all Board members except two, the current and immediate past president of the medical staff. The Board consists of 4 categories of people: (1) up to 20 Governors, appointed by the Bishop, including the Chair and Vice Chair; (2) the President and CEO (appointed by the Bishop); (3) the Episcopal Vicar for the Healthcare Apostolate of the Diocese of Metuchen (the Bishop's representative); and (4) the current and immediate past president of the medical staff. The exact number of Board members is decided by the Bishop. (*Id.*, Bylaws, Art. IV, Section 2.) For the Board to act, the Chair or his/her designee must be in the majority of voting members. (*Id.*, Bylaws, Article IV, Section 10.)

10. The Bishop has the power to appoint and remove the Executive Director of each of the Corporation's subsidiaries, in his sole discretion, with or without cause, at any time, and has the power to exercise the power of the Corporation with respect to any of the Corporation's subsidiaries. (*Id.*, Bylaws, Article III, Sections (2) (c) and (d).)

Associated With

11. The convictions of the Catholic Church are central to the organization, structure and operations of Saint Peter's. This mission and philosophy is set forth in its bylaws as follows:

> The basic mission of the Corporation and of all its subsidiaries is to continue the healing ministry of Jesus Christ as expressed in the Gospel. This mission shall be in support of and further the mission of the Catholic Church, specifically in the Diocese of Metuchen as expressed in the Mission Statement of the Diocese of Metuchen. The Corporation and all its subsidiaries shall foster the values of love, compassion, justice, and reverence for human life.

(*Id.*, Bylaws, Article I, Section 2(a).)

12. The bylaws further provide:

> The Corporation shall perform its general and specific corporate purposes in conformity with the law, teachings and moral practices of the Roman Catholic Church and in accord with the tenets set forth in the latest edition of the directives entitled "Ethical and Religious Directives for Catholic Health Care Facilities" approved by the National Conference of

> Catholic Bishops, and as promulgated by the Bishop of Metuchen for use in his Diocese.

(*Id.*, Bylaws, Article I, Section 2(b).)

13. The bylaws also contain qualifications for membership on the Board of Governors. One qualification is the agreement to conduct the Corporation's activities in accord with the Roman Catholic philosophy of the Ethical and Religious Directives for Catholic Health Care Facilities:

> In order to be eligible for Governorship, the person so nominated shall agree to conduct the activities and business of the Corporation under the purview of and in accord with Roman Catholic philosophy and the Ethical and Religious Directives for Catholic Health Facilities as adopted by the National Conference of Catholic Bishops and the United States Catholic Conference and implemented by the Bishop. This shall include, but not be limited to, the belief in the right to life and the inviolability of the human person and the unqualified opposition to abortion.

(*Id.*, Bylaws, Article IV, Section 3(a).) In addition, each newly appointed Governor is required to acknowledge in writing that he agrees to conduct the business and affairs of the Corporation pursuant to the Certificate of Incorporation and the Bylaws. (*Id.*, Bylaws, Article IV, Section 3(c).)

14. Saint Peter's has a Pastoral Care Department. The Pastoral Care Department fosters and addresses the varied spiritual needs of patients, employees and health care professionals, and "[e]nsure[s] that the Corporation operates in accordance with its Catholic

mission . . . ." (*Id.*, Bylaws, Article V, Section 15(a)(b)(1) and (2).)

15. In keeping with its healthcare ministry, Saint Peter's each year devotes substantial resources to services to the indigent and the broader community. In the last calendar year, it reported $36.2 million expended for charity care and community benefits, or 9% of its total expenses, which includes charity care, education, health promotion, health clinics and screenings and other services to the community.

16. Saint Peter's provides many services associated with the Catholic Church, including daily Mass, meditation facilities, and prayer leadership.

17. Catholic devotional objects such as crucifixes, pictures and statues are displayed throughout Saint Peter's. Every Board meeting begins with a prayer. Every morning there is a prayer broadcast over the public address system at the hospital.

18. Saint Peter's is an organization listed in *The Official Catholic Directory*. It appears on page 781 of the 2013 edition, a true copy of which is attached hereto as Exhibit C. Its tax exempt status derives from its inclusion in the group exemption issued by the IRS to all agencies, instrumentalities and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church. The Internal Revenue Service has ruled that "[a]ny organization listed in this directory is considered associated with the Roman Catholic Church in the United States." *See, e.g.*, General Counsel Memorandum 39007 (1983), a true copy of which is attached hereto as Exhibit D.

The Retirement Plan Committee Maintains the Saint Peter's Defined Benefit Retirement Plan

19. The Plan at issue in this lawsuit is maintained by the Board's Retirement Plan Committee. The terms of the Plan itself specify that the Plan is to be administered by the Retirement Plan Committee. Plan, Article 8, Section 8.01. Attached hereto as Exhibit E is a true copy of the Saint Peter's Healthcare System Retirement Plan, as amended and restated effective January 1, 2010. As previously mentioned, I am a member of that Committee.

20. The Retirement Plan Committee is another standing committee of the Board. The Retirement Plan Committee possesses overall responsibility for the oversight of the retirement plans sponsored by Saint Peter's, and its responsibilities also include overseeing management of plan assets for defined benefits pension plans, and reviewing the Corporation's policy for funding its retirement plans. (Exhibit B, Bylaws, Article V, Section 13(b)(1)-(3).) In making investment decisions, the Retirement Plan Committee is guided by the investment principles adopted by the Church, the U.S. Conference of Catholic Bishops' Socially Responsible Investment Guidelines, which is available at http://www.usccb.org/about/financial-reporting/socially-responsible-investmentguidelines.cfm (last visited August 6, 2013) (a true copy of which is also attached hereto as Exhibit F).

21. As applied to the Plan, the Retirement Plan Committee has:

> the exclusive discretionary authority and power to determine eligibility for benefits and to construe the terms and provisions of the

> Plan, determine questions of fact and law arising under the Plan, direct disbursements pursuant to the Plan, and exercise all other powers specified herein [in the Plan] or which may be implied from the provisions hereof [the Plan]. The Committee may adopt such rules for the conduct of the administration of the Plan as it may deem appropriate.

(Exhibit E, Plan, Article 8, Section 8.02.)

22. Participation in the Plan is limited to eligible employees of Saint Peter's and certain of its subsidiaries. Effective as of June 30, 2010, the Plan was frozen as to participation, such that no employee hired after such date is eligible to become a Plan Participant. (Exhibit E, Plan, Article 2, Section 2.01(d).) The Plan was frozen to active employees for additional accrual benefits as of December 31, 2012.

23. The Retirement Plan Committee consists of the Chair of the Board of Governors (appointed by the Bishop), the Chief Financial Officer (who is the Treasurer, appointed by the Bishop (*see* Exhibit B, Bylaws, Articles VIII, Section 6)), the Vice President for Human Resources, and up to seven more additional Governors. It may also include others elected by the Board. (Exhibit B, Bylaws, Article V, Section 13(a).) It is currently composed of 5 Board members only, all appointed to the Board by the Bishop, including the Episcopal Vicar for the Healthcare Apostolate. Since the Bishop controls the Board, the Retirement Plan Committee is also controlled by the Roman Catholic Church.[1]

---

[1] Section 1.10 of the Plan explicitly requires the Bishop to appoint all members of the Retirement Plan Committee. (*See* Exhibit E, Plan, at 5.)

24. The Retirement Plan Committee has never made an affirmative election, in accordance with Section 410(d) of the Code and Treasury Regulation Section 1.410(d)-1 issued thereunder, to have ERISA apply to the Plan. Therefore, the Plan is a "non-electing" church plan exempt from the provisions of ERISA.

25. The plaintiff in this matter, Laurence Kaplan, is a retired former employee and has been receiving his full benefits under the Plan without interruption. Saint Peter's has continued to fund the Plan and makes contributions on a weekly basis.

Saint Peter's Does Not Deviate From The Religious Convictions of the Catholic Church

26. The Complaint alleges that Saint Peter's distances itself from the religious convictions of the Catholic Church when it is in its economic interest to do so, such as when it hires non-Catholic employees, sponsors a medical residency program, invests in certain businesses, encourages patients to seek spiritual support and associates with certain secular institutions. (Complaint ¶ 6.) The Complaint is not correct. These allegations show a lack of understanding of Catholic religious convictions and how Saint Peter's operates. Saint Peter's strictly complies with the religious convictions of the Catholic Church, as it is required to do by its bylaws.

Employment

27. Saint Peter's does in fact hire non-Catholics. There is no Church requirement to hire only Catholics and, in fact, I am advised that the Diocese of Metuchen, an arm of the Church, itself hires non-Catholics. As mentioned, our certificate of incorporation and bylaws

require Saint Peter's to comply with the "Ethical and Religious Directives for Catholic Health Facilities" approved by the United States Conference of Catholic Bishops ("ERDs"). A copy of the latest edition of the ERDs is attached hereto as Exhibit G. Page 7 of the ERDs notes that lay Catholics are joined by many religious communities in their commitment to health care ministry, and are joined by many who are not Catholic. More specifically, Directive 7 requires that Catholic health care institutions provide equal employment opportunities. Employees, however, must respect and uphold the religious mission of the institution and adhere to the ERDs, which Saint Peter's requires. (*Id.*, Directive 9.)

Medical Residency Program

28. The Complaint alleges that Saint Peter's sponsors a medical residency program that instructs on procedures forbidden by the Catholic Church, including contraception and tubal ligation. Saint Peter's fully complies with the ERDs in all respects. No contraception is provided at Saint Peter's and it will not permit tubal ligation to be performed at any of its facilities. To the extent medical residents need clinical experience on forbidden procedures for board certification in their specialty, they must get it elsewhere at other institutions. *See* Certification of Dr. Richard A. Stewart.

Failure to Impose Religious Beliefs on Patients

29. The ERDs recognize that spiritual needs during illness are an important part of healing and provide that pastoral care is an integral part of Catholic Health Care. (*See* Exhibit G at 14.) In accordance with Directive 11, pastoral services and/or referrals are available to all in keeping with their religious beliefs

or affiliation. Saint Peter's respects and honors every religion in its efforts to serve the poor and its entire community. This is consistent with the ERDs, which even permit non-Catholic members to be appointed to the pastoral care staff for the sake of appropriate ecumenical and interfaith relations. (*Id.*, Directive 22.)

Collaborating with Medical Institutions Without Religious Affiliation

30. The Complaint criticizes Saint Peter's affiliations with Drexel University as a teaching hospital for it, and the clinical collaboration with Children's Hospital of Philadelphia, institutions without religious affiliation. To fulfill its ministry of medical education, Saint Peter's must affiliate with secular institutions but does so in a way completely consistent with the ERDs, which must be strictly followed by other affiliated institutions when performing any services on the premises of any of Saint Peter's institutions. Recognizing the need for forming partnerships with secular organizations, the ERDs contain an entire section, "Part Six, Forming New Partnerships with Health Care Organizations and Providers." *(See id* at 34-37.) The ERDs specify how these partnerships are to be governed and Saint Peter's requires compliance with the ERDs as a condition of their relationships with any secular institution.

Interests in Profit Making Entities

31. The Complaint criticizes Saint Peter's for ownership of a wholly owned captive insurance company incorporated in the Cayman Islands and a debt collection company. To further the mission of the Church, and as a steward of its assets, Saint Peter's seeks to minimize what it needs to spend for malpractice insurance. It does so through the captive insurance

company through which it provides malpractice insurance for its employed and some of its contractual physicians and its medical facilities. The insurance company provides no insurance for any outside entities or physicians and its revenue is a very small percent of Saint Peter's annual budget. Saint Peter's is mandated to maintain malpractice insurance coverage by its bond indenture agreements. If Saint Peter's did not self-insure its malpractice risk its only other option would be to purchase malpractice insurance from a secular insurance company. A motivation to reduce costs also led to the incorporation of a debt collection company, but this company is dormant and has never provided any services. The ERDs do not prohibit purchasing needed services from related companies or otherwise acting in a way to reduce expenses that must be incurred.

32. In summary, Saint Peter's is very serious and committed to fulfilling its Catholic mission and complying with the ERDs.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 12, 2013

/s/ Garrick Stoldt
GARRICK STOLDT

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Honorable Michael A. Shipp
United States District Judge

(Electronically Filed Document)

SUPPLEMENTAL CERTIFICATION OF GARRICK STOLDT

GARRICK STOLDT hereby certifies as follows:

1. I am Vice President and Chief Financial Officer of Saint Peter's Healthcare System, Inc. ("Saint Peter's"), a member of its Retirement Plan Committee and a defendant herein. I submit this Supplemental Certification in further support of Defendants' Motion to Dismiss the Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (the "Motion to Dismiss"). The

purpose of this certification is to advise the Court of developments that have taken place subsequent to the filing the Motion to Dismiss.

2. The Complaint mistakenly alleges that Saint Peter's applied to the IRS for church plan status in 2006 and that the IRS had not ruled on this application at the time the Complaint was filed. (Complaint ¶¶ 58 & 64.)

3. In actuality, Saint Peter's requested a private letter ruling in 2006 to affirm that the Saint Peter's Healthcare System Retirement Plan (the "Plan") has been and is a church plan. The IRS had not issued a private letter ruling regarding the Plan at the time the Motion to Dismiss was filed.

4. On August 14, 2013, the IRS issued a private letter ruling to Saint Peter's holding that the Plan is a church plan within section 414(e) of the Internal Revenue Code (the "IRS Ruling"). A true copy of the IRS Ruling is attached hereto as Exhibit A.

5. In finding the requisite control and association necessary for church plan status, the IRS Ruling states:

> [Saint Peter's] is indirectly controlled by [the Roman Catholic Church] through its relationship with [the Diocese of Metuchen.]
>
> In view of the common religious bonds between [the Roman Catholic Church] and [Saint Peter's], and the indirect control of [Saint Peter's] by [the Roman Catholic Church] through [the Diocese of Metuchen], we conclude that [Saint Peter's] . . . is associated with a church or a convention or association

> of churches within the meaning of section 414(e)(3)(D) of the Code . . . .

(Exhibit A at 5.) The IRS Ruling further notes that the [Retirement Plan] Committee is associated with and under the control of [the Diocese of Metuchen], and is indirectly associated with and under the control of [the Roman Catholic Church]." (*Id.*)

6. The IRS Ruling concludes that the Plan "is a church plan within the meaning of section 414(e) of the Code, and has been a church plan within the meaning of section 414(e) of the Code retroactive to January 1, 1974." (*Id.*) I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 28, 2013.

/s/ Garrick Stoldt
GARRICK STOLDT

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Honorable Michael A. Shipp
United States District Judge

(Electronically Filed Document)

REPLY CERTIFICATION OF MONSIGNOR JOHN FELL

Monsignor John Fell hereby certifies as follows:

1. I am currently the Episcopal Vicar for the Healthcare Apostolate for Saint Peter's Healthcare System, Inc. I previously submitted a Certification in this case dated August 8, 2013. I submit this Reply Certification in further support of Defendants' Motion to Dismiss the Complaint to clarify an issue raised by plaintiff with respect to the Pastoral Care Department. This issue illustrates plaintiff's misunderstanding

of the Ethical and Religious Directives for Catholic Health Care Services (the "ERDs").

2. In paragraph 22 of my Certification, I pointed out that the Pastoral Care Department works to insure that patients of Saint Peter's have access to spiritual care regardless of faith. I also noted that in keeping with the ERDs (in particular, Directive 22), the director of the Pastoral Care Department is Catholic. (Certification of Monsignor John Fell, ¶ 22). That statement is accurate.

3. The Plaintiff has filed two certifications to the effect that a prior director of the Pastoral Care Department, to their recollection, was not Catholic. (Declaration of Laurence Kaplan, ¶ 24; Declaration of Bruce Pardo, ¶ 14). During the 1990s, James DeVries, a Minister of the Reformed Church, was Director of Pastoral Services. This is not inconsistent with the ERDs. For the sake of appropriate ecumenical and interfaith relations, the ERDs permit the appointment of non-Catholic members to the pastoral care staff of Catholic healthcare institutions. While the Director of the Pastoral Care Department is usually Catholic, the ERDs provide for an exception to this norm. (Certification of Garrick Stoldt, Ex. G, Directive 22).

I certify under penalty of perjury that the foregoing is true and correct.

Executed on October 12th, 2013.

/s/ John Fell
MONSIGNOR JOHN FELL

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Honorable Michael A. Shipp
United States District Judge

(Electronically Filed Document)

REPLY CERTIFICATION OF GARRICK STOLDT

GARRICK STOLDT hereby certifies as follows:

1. I am Vice President and Chief Financial Officer of Saint Peter's Healthcare System, Inc. ("Saint Peter's" or "the Corporation"), and a defendant herein. I submitted a prior certification in this matter, executed on August 12, 2013, and a Supplemental Certification executed on August 28, 2013. I submit this Reply Certification in further support of Defendants' Motion to Dismiss the Complaint to address an inconsistency pointed out by plaintiff between my prior Certification

and Saint Peter's IRS Form 990, filed earlier this year with the Internal Revenue Service.

2. My prior Certification set forth the corporate structure of the Corporation and powers of the Bishop of the Diocese of Metuchen (the "Bishop"). Among other things, it noted that the sole member of the Corporation is the Bishop (*Cert.* at ¶ 4); that the Bishop appoints all members of the Board of Governors except two (*Cert.* at 9); that the Bishop has the power to remove any and all Governors of the Board, and the Trustees of the Corporation's subsidiaries; and that the Bishop has the power to veto any action by the Corporation or its Board. (*Cert.* at ¶ 7). All of these statements were supported by citations to the Corporation's governing documents, either its Certificate of Incorporation or its By-laws.

3. I am advised that plaintiff's Brief alleges an inconsistency between my prior Certification on the one hand and answers provided on Saint Peter's 2011 IRS Form 990 with respect to its governing structure. In particular, the Brief points out that in Part VI, answers to questions 6, 7a and 7b indicated that the Corporation did not have members, that the Corporation did not have members who had the power to elect or appoint one or more members of the governing body, and did not have governance decisions reserved to or subject to approval by members. Upon review of this form, I have determined that these boxes were checked incorrectly because they are inconsistent with Saint Peter's governing documents. As set forth in my prior Certification, Saint Peter's Certificate of Incorporation and Article III, Section 1 of its By-laws expressly state that the Bishop of Metuchen is Saint Peter's sole corporate member, with the powers set forth in the By-laws. Article III, Section 2(a) of the By-laws provides

that the Bishop has the power to remove any and all members of Saint Peter's Board of Governors or its subsidiaries' Board of Trustees at any time in his sole discretion. Article III, Section 2(b) provides that the Bishop appoints and removes, *inter alia*, the Chair of the Board and the CEO in his sole discretion. Article III, Section 1(c) and (d) provide that the Bishop appoints and removes the Executive Directors of Saint Peter's subsidiaries at any time, for any reason, in his sole discretion, and that he may directly exercise the powers of Saint Peter's over any subsidiary in his sole discretion. Article III, Section 2(e) gives the Bishop the power to veto any action of the Board of Governors. Article IV, Section 2 provides that the annual election or re-election of members of the Board of Governors by the Board is "subject to the approval of the Member," i.e. the Bishop. The Certificate of Incorporation and By-laws are Saint Peter's authoritative governing documents. (*Stoldt Cert.*, Exh. A and B). It follows that the answers to Questions 6, 7a and 7b on the 2011 Form 990 were inaccurate insofar as they stated that Saint Peter's does not have a member, does not have a member with authority to appoint members of the governing body, or that the decisions of the governing body were not subject to approval by a Member. I have therefore directed that Saint Peter's file an amended Form 990 that accurately reflects its governance and organizational structure.

4. The 2011 Form 990 with supporting schedules consists of 61 pages and was prepared by our accountants, WithumSmith+Brown, P.C. The Governance Section, Part VI, contains a series of questions seeking 'Yes' or 'No' answers by completion of x's in the appropriate box. Pages 3-6 of IRS Form 990 contain a series of approximately 118 questions, including subparts, seeking yes or no answers. These three boxes

were inadvertently checked incorrectly. The corporate structure and powers of the Bishop are correctly stated in my prior Certification, which also attaches the underlying governing documents. There can be no dispute about these powers and structure.

5. The Brief also argues that the statement contained in Schedule O of the 2011 Form 990 containing the Community Benefit statement is somehow inconsistent with my prior Certification. This is not the case. That Community Benefit statement points to control of Saint Peter's University Hospital, a subsidiary of the Corporation, resting with its Board of Trustees, which is comprised of independent civil leaders and other prominent members of the community. (*Bunch Decl.*, Exh. K at p. 30). The Board of Trustees of the Hospital, of course, controls its affairs subject to the Bishop's powers of appointment, the Bishop's power to remove any and all Trustees, and the Bishop's power to exercise the power of the Corporation with respect to the Corporation's subsidiaries. *See Stoldt Cert.* ¶¶ 7 and 10, Exh. B, By-laws, Article III, Section 2.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on October 14, 2013.

/s/ Garrick Stoldt
GARRICK STOLDT

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 13-2941 (MAS)(TJB)

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Honorable Michael A, Shipp
United States District Judge

(Electronically Filed Document)

CERTIFICATION OF GARRICK STOLDT

GARRICK STOLDT hereby certifies as follows:

1. I am the Vice President and Chief Financial Officer of Saint Peter's Healthcare System, Inc. ("Saint Peter's"), a member of its Retirement Plan Committee and a defendant herein. I submit this Certification in opposition to Plaintiff's Motion for Partial Summary Judgment and in support of Defendants' Cross-Motion for Summary Judgment.

2. As I understand, Plaintiff has made certain factual allegations concerning (i) the lack of any impediment to Saint Peter's religious beliefs or practices were Saint Peter's to comply with ERISA and (ii) the alleged underfunding of the Saint Peter's Retirement Plan (the "Plan").

3. As set forth below, Plaintiffs allegations are incorrect. Were Saint Peter's to comply with ERISA, its religious mission and practices would be negatively impaired. Catholic doctrine dictates that Saint Peter's provide its health care services to the indigent, uninsured, and underinsured, and compliance with ERISA would greatly curtail Saint Peter's ability to provide those services. Compliance with ERISA would also interfere with the ability of the Saint Peter's Retirement Plan Committee to adhere to Catholic principles in its investment decisions. Further, contrary to Plaintiffs assertions, the Plan is sufficiently funded so as not to be considered "at risk" under ERISA.

The Plan's Compliance with ERISA Would Greatly Interfere with Saint Peter's Catholic Mission and Practices

A. Saint Peter's Community Benefits and Charity Care

4. In support of Defendants' Motion to Dismiss, I submitted two certifications to establish that Saint Peter's is controlled by and associated with the Roman Catholic Church (*see* Dkt. Nos. 43 and 54-1). I herein repeat and reaffirm my statements in those certifications.

5. The provision of services to the poor and needy is an integral part of Saint Peter's adherence to the Catholic faith.

6. As noted previously in my certifications, as mandated by its Certificate of Incorporation and Bylaws, Saint Peter's is required to comply with the latest edition of the "Ethical and Religious Directives for Catholic Health Care Services" approved by the United States Conference of Catholic Bishops (the "ERDs"). As detailed in the Certification of Monsignor John Fell, the Bishop of Metuchen has also required that all Catholic hospitals within the Diocese of Metuchen abide by the ERDs. (*See* Dkt. No. 42-10, ¶ 10.)

7. The ERDs specifically provide that Catholic healthcare institutions should provide services to the poor, the uninsured and underinsured:

> [T]he biblical mandate to care for the poor requires us to express this in concrete action at all levels of Catholic health care. This mandate prompts us to work to ensure that our country's health care delivery system provides adequate health care for the poor. In Catholic institutions, particular attention should be given to the health care needs of the poor, the uninsured, and the underinsured.

(Dkt. No. 43, Exhibit G, ERDs at 10).

8. Directive 3 of the ERDs likewise provides that:

> In accord with its mission, Catholic health care should distinguish itself by service to and advocacy for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable to discrimination: the poor; the uninsured and the underinsured; children and the unborn; single parents; the elderly; those

> with incurable diseases and chemical dependencies; racial minorities; immigrants and refugees. In particular, the person with mental or physical disabilities, regardless of the cause or severity, must be treated as a unique person of incomparable worth, with the same right to life and to adequate health care as all other persons.

(*Id.*, ERDs at 11.)

9. Consistent with the ERDs, Saint Peter's devotes a significant amount of its resources to charity care and community benefits. Saint Peter's dedication to charity care and community benefits is evident in the most recent Audited Financial Statement for 2013 and 2012 for Saint Peter's, dated April 25, 2014, a true and correct copy of which is attached as Exhibit A.

10. As noted on page 11-12 of the statement, services provided to the indigent includes "the cost of providing services to persons who cannot afford health care due to inadequate resources and/or who are uninsured or underinsured," including the costs of "traditional charity care; unpaid costs of care provided to beneficiaries of Medicaid and other indigent public programs; services such as free clinics and meal programs for which a patient is not billed or for which a nominal fee has been assessed; and cash and in-kind donations of equipment, supplies or staff time volunteered on behalf of the community."

11. Other community benefits provided to those that may not qualify as indigent but who still may need special services and support include "services such as health promotion and education, health clinics and screenings, all of which are not billed or can be operated only on a deficit basis . . . ." (Exhibit A at 12.)

12. In 2013 and 2012, the unreimbursed costs of Saint Peter's community benefits, net of subsidies, have totaled approximately $35,578,000 and $36,287,000, respectively, with over $24 million in each of these years spent on community benefits to the indigent. These costs represent 8.4 % and 8.7% of total operating expenses in 2013 and 2012, respectively. The total number of people who received community benefits from Saint Peter's in 2012 exceeds 450,000.

13. While Saint Peter's does receive some reimbursement from the New Jersey Health Care Subsidy Fund for charity care, this reimbursement only covers a small amount of the Saint Peter's costs, approximately $5,911,000 and $5,857,000 for 2013 and 2012, respectively. Indeed, the community benefits provided by Saint Peter's far exceed New Jersey's requirements for charity care.

14. Saint Peter's dedication to community benefits and charity care derives from its adherence to the Catholic belief and practices, as guided by the ERDs. The provision of community benefits is therefore an integral part of the Catholic identity of Saint Peter's.

B. Compliance with ERISA Would Interfere with Saint Peter's Ability to Provide Services to the Poor

15. In support of its summary judgment motion, I understand that Plaintiff has submitted declarations from two former employees, Laurence Kaplan and John Matuska, who allege that the operation of the Plan pursuant to ERISA does not interfere with the religious beliefs or practices of Saint Peter's. Mr. Kaplan and Mr. Matuska are mistaken. Were it to become necessary to operate the Plan pursuant to ERISA, the religious mission of Saint Peter's would be

greatly compromised by the need to reduce charity care and other community benefits to its patients and in services to the larger community.

16. Since the inception of the Plan, and until 2005-06, Saint Peter's funded the Plan above the minimum funding requirements provided under ERISA. However, in 2005, the IRS enacted new requirements that changed the minimum level of funding necessary to stay compliant with ERISA. Under these new requirements, Saint Peter's was required to contribute a significant amount of money, approximately $28 million, in one year in order to comply with the ERISA funding requirements. After making this lump sum contribution, no further contribution would have been required for the next two years. This amount was significantly greater than the annual amounts that Saint Peter's had historically contributed to the Plan and was far greater than the amounts that Saint Peter's had budgeted for its contribution to the Plan that year.

17. Had Saint Peter's contributed the necessary $28 million to the Plan that year, the religious mission of Saint Peter's would have been significantly curtailed because Saint Peter's would not have been able to devote the significant resources to its community benefits and charity care. The diversion of resources away from community benefits and charity care would have greatly interfered with Saint Peter's ability to provide for the health care needs of the poor, uninsured, and underinsured in keeping with the Catholic identity and the ERDs.

18. In addition to the detrimental impact to the religious mission of the hospital, Saint Peter's would also have faced other significant financial burdens if it had contributed this $28 million sum in one year.

Our bond rating would have most certainly been negatively impacted and our funds available for operating expenses would have been decreased significantly, likely requiring a reduction in the number of employees, including Plan beneficiaries.

19. In order to avoid this devastating impact to Saint Peter's and its religious mission, Saint Peter's instead chose to forego its operation of the Plan at. ERISA required levels. Because the Saint Peter's Retirement Plan Committee had never made an affirmative election to operate under ERISA pursuant to Section 410(d) of the Internal Revenue Code and Treasury Regulation Section 1.410(d)-1 issued thereunder, it was under no obligation to continue funding at ERISA levels.

20. Although Saint Peter's chose not to maintain the funding of the Plan at ERISA levels, Saint Peter's always intended, and still intends, to maintain the level of benefits promised to the Plan's participants. Accordingly, Saint Peter's contributed $28 million to the Plan, but spread it out over the course of three years instead of one, in order to avoid the negative effects to Saint Peter's had it been paid in one year. Were Saint Peter's to pay the $28 million in one year, it would not have been necessary to make any additional contributions for the subsequent two years. Accordingly, Saint Peter's still paid the $28 million that would have been required, but it did so over the course of a three year period.

21. Although, as set forth below, the Plan is currently funded above the "at risk" levels specified by ERISA, maintaining the Plan as a church plan has allowed Saint Peter's the flexibility to manage its finances such that it can continue to provide community benefits and charity care at the level it

believes is appropriate, while still maintaining the Plan at a healthy level. Saint Peter's can also avoid payment of other incidental payments associated with ERISA, such as premiums to the Pension Benefit Guaranty Corporation and additional actuarial expenses, and can instead devote such resources to funding the Plan and to its community benefits program. Accordingly, the operation of the Plan as a church plan has allowed Saint Peter's to abide by its religious tenets,

The Plan's Compliance with ERISA Would Interfere with Saint Peter's Adherence to Catholic Investment Principles

22. Compliance with ERISA would also interfere with Saint Peter's ability to adhere to the investment principles promulgated by the U.S. Conference of Catholic Bishops. As noted in my prior certification, the Saint Peter's Retirement Plan Committee is guided by and adheres to the U.S. Conference of Catholic Bishops' Socially Responsible Investment Guidelines (the "Investment Guidelines"). (Dkt. No. 43, Exhibit F.) The Investment Guidelines are guided by "Catholic moral principles" and have the following aims: "protecting human life; promoting human dignity; reducing arms production; pursuing economic justice; protecting the environment, and encouraging corporate responsibility." (*See id.*)

23. The Retirement Plan Committee abides by the Investment Guidelines as part of its adherence to the Catholic teachings and practices. If the Plan were ordered to comply with ERISA, then the Plan's investments would have to adhere to ERISA guidelines. A conflict will likely result between the Retirement Plan Committee's need to comply with the

Investment Guidelines to adhere to its Catholic mission and the need to comply with ERISA.

The Plan Currently Exceeds ERISA's Minimum Funding Guidelines

24. Contrary to Plaintiff's suggestions, the Plan is currently funded above the at-risk level specified by ERISA.

25. Attached as Exhibit 13 is a true and correct copy of a statement by Saint Peter's actuary, Towers Watson, concerning the present funding of the Plan. Using an ERISA method of accounting, the Plan is currently funded at 83 percent, or a $34,500,000 unfunded liability. Under 26 U.S.C. §§ 430(i)(4)(A) and 436(c)(1), a plan is not at risk if it is funded at more than 80 percent under the ERISA basis of accounting. Therefore, at 83 percent, the Plan is funded above ERISA's at-risk level.

26. Plaintiff has submitted two documents to support his erroneous suggestion that the Plan is underfunded in violation of ERISA § 302 – an offering memorandum for $100,640,000 New Jersey Health-Care Facilities Financing Authority Revenue and Refunding Bonds, Saint Peter's University Hospital Obligated Group Issue, Series 2011 and Saint Peter's Consolidated Financial Statements and Supplementary Information, years ended December 31, 2012 and 2011, which are attached as Exhibits 13 and G to the Declaration of Matthew Smith.

27. Neither of these exhibits prove that the Plan is underfunded in violation of ERISA. Instead, both of these documents calculate the liability to the Plan on a Generally Accepted Accounting Principles (GAAP) basis. To determine compliance with ERISA funding

requirements, the Department of Labor and the Internal Revenue Service measure compliance using ERISA criteria rather than GAAP. Thus, it is not possible to determine whether a plan is compliant with ERISA by reviewing accrued unfunded pension liability calculated on a GAAP basis.

28. While there are several differences in the rules for calculating pension liability under GAAP and ERISA, the prime difference is the determination of the discount rate. Under GAAP, the interest rate used to discount benefits is set at current market rates specific to the balance sheet date, whereas under ERISA accounting, the interest rate may calculated by using interest rate experience prior to the statement date.

29. The significant difference between ERISA and GAAP calculations is evident by the most recent Audited Financial Statement for 2013 and 2012 *(see* Exhibit A). Note 8 to the financial statement, at page 28, shows that on a GAAP basis, the accrued liability of the Plan is $55,967,000 in 2013, as opposed to the $34,500,000 in unfunded liability calculated pursuant to ERISA.

30. Notably, the most recent financial statements for Saint Peter's show a significant improvement to the Plan's funding, which unfunded liability is down from $97,132,000 in 2012 – a reduction by almost half. The financial improvement is attributed in part to Saint Peter's ongoing contributions to the Plan, which it has made every year since applying to the IRS for a letter ruling on church plan status in 2006. Since mid-2007, Saint Peter's makes contributions to the Plan weekly rather than intermittently in order to fund on a more timely basis.

31. Accordingly, there is no basis for Plaintiffs allegation that the Plan's current funding would violate the minimum funding requirements contained in ERISA § 302.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 2, 2014.

/s/ Garrick Stoldt
GARRICK STOLDT

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 3:13-cv-02941

LAURENCE KAPLAN, on behalf of himself, individually. and on behalf of all others similarly situated.

Plaintiff,

vs.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

DECLARATION OF LAURENCE KAPLAN IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

I, Laurence Kaplan, declare under penalty of perjury:

1. I am competent to testify and make this Declaration based on my personal knowledge.

2. I submit this Declaration in support of Plaintiff's Opposition to Defendants' Motion to Dismiss the Complaint. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

3. I was employed at the hospital ("Hospital" or "Saint Peter's") from 1985 until 1999. From 1985 until sometime in 1998, the Hospital was called Saint

Peter's Medical Center ("SPMC"). After that, the Hospital was called Saitn Peter's University Hospital ("SPUH").

4. I am a vested participant in the Saint Peter's Healthcare System Retirement Plan ("the Plan").

5. During my time as an employee of Saint Peter's, I was Manager of Food and Nutrition Services.

6. When I began working at SPMC in 1985, I was given the Plan booklet which stated, among other things, that the plan was insured by the Pension Benefit Guaranty Corporation and premiums were being paid for coverage.

7. I received annual reports about the plan until 1996. These reports included representations that the Plan was an ERISA covered plan. At the time that the annual reports stopped, no explanation was given by my employer.

8. At no time during my employment at the Hospital was I told that the Plan was a so-called "church plan" exempted from ERISA.

9. To my knowledge, while I was employed at Saint Peter's, the Plan was at all times maintained as an ERISA plan.

10. I first heard of the supposed "church plan" status of the Plan on or about November 2011.

11. The Plan was not established by a church and is not and has never been maintained by a church.

12. My personal experience with Saint Peter's made it clear that employment and hospital management decisions were not made based upon Catholic doctrine.

13. Being a Catholic or adhering to Catholic doctrine was not a pre-requisite for employment at the

Hospital. I was hired by a Jewish Vice president at Saint Peter's. My predecessor was Jewish, and I am also Jewish.

14. As Manager of Food and Nutrition Service, I participated in management meetings at the Hospital.

15. For many of the Management meetings I attended, individual managers would open meetings with prayers, poems, or inspirational statements that were of a non-religious and non-sectarian character. Other staff meetings that I attended began without any statement or prayer at all.

16. Managers were permitted to make any kind of inspirational or motivational statements to begin these meetings. The messages included Jewish and other non-Catholic and non-religious thoughts and prayers.

17. During my time as an employee at the Hospital, I never saw the Ethical and Religious Directives ("ERDs") posted or displayed inside the Hospital, and I never received a copy of the ERDs.

18. I am not aware of any Saint Peter's employee being reprimanded or disciplined for violating the ERDs.

19. I was never told that as a Hospital employee I was required to comply with ERDs.

20. I am aware of a hotline that Saint Peter's made available for employees to call anonymously and report anything that they felt was against the Hospital's rules and regulations. This hotline was part of a corporate compliance program and its only purpose was to report violations of the corporate compliance program.

21. Neither I nor any other employees that I am aware of was directed or told that the hotline was to be used to report violations of the ERDs or Catholic religious doctrine. I do not know of any employees who would have used a hotline to report violations of Catholic religious doctrine, even if it existed.

22. During my time at the Hospital I was aware of a number of practices that were ecumenical in nature. For example, I witnessed rabbis visiting Jewish patients, protestant ministers visiting protestant patients, and other non-Catholic religious and spiritual leaders visiting patients at Saint Peter's.

23. Saint Peter's supported the religious practices of non-Catholics in other ways. For example, I helped provide electric candles to help Jewish patients commemorate Hanukkah and Sabbath. I helped the Hospital make arrangements with a restaurant to get approved food for the Hospital's Orthodox Jewish patients. Further, there was a room set aside in the hospital for Orthodox Jewish patients where an Orthodox Jewish organization provided food that med the dietary standards for Orthodox patients and their family members.

24. I am aware of at least one non-Catholic individual who served as Director of Pastoral Care while I was employed at Saint Peter's.

25. I never met nor communicated with the Bishop during my time at the Hospital.

26. The Bishop visited the Hospital very rarely.

27. CEO John Matuska controlled Saint Peter's business during my tenure at the Hospital. John Matuska reported to the Board of Trustees.

28. At managers' meetings, we were given information about how Saint Peter's assets were being invested. We were told that the assets were invested in low-risk vehicles, such as bonds. We were never told that investments were limited by any Catholic investment guidelines or by Catholic doctrine.

29. I rely on my pension from this Plan to support me and my family in retirement. I and other Plan participants and beneficiaries will be put at great risk without ERISA protections and PBGC insurance.

The foregoing is true to the best of my knowledge, information and belief.

Executed on September 18, 2013, in Tom's River, N.J. Ocean County.

/s/ Laurence Kaplan
Laurence Kaplan

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No 3:13-cv-02941

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Electronically Filed

DECLARATION OF BRUCE PARDO IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION TO DISMISS THE COMPLAINT

I, Bruce Pardo, declare under penalty of perjury:

1. I am competent to testify and to make this Declaration based on my personal knowledge.

2. I submit this Declaration in support of Plaintiff's Opposition to Defendants' Motion to Dismiss the Complaint. I have personal knowledge of the matters

stated herein and, if called upon, I could and would competently testify thereto.

3. I am currently a vested participant in the Saint Peter's Healthcare System Retirement Plan ("the Plan").

4. I was employed at Saint Peter's Medical Center ("SPMC" or "Saint Peter's") from October 1993 until August 1998, as Vice President of Human Resources My responsibilities as Vice President of Human Resources included, but were not limited to developing policies and procedures for human resources, compensation and benefits, recruitment, employee records, and payroll management.

5. As Vice President of Human Resources, I regularly attended meetings of the Board of Trustees ("the Board") and meetings of Saint Peters' Retirement Plan Subcommittee ("RPS").

6. During my tenure as Vice President of Human Resources, the Plan was maintained as an ERISA Plan.

7. As Vice President of Human Resources, it was at all times clear to me that the SPMC leadership, including me, wanted to have the safeguards and protection of an ERISA Plan for our employees and advantages which such a plan had in recruitment of skilled personnel.

8. SPMC provided me with a Summary Plan Description which stated, among other things, that the Plan was insured by the Pension Benefit Guarantee Corporation ("PBGC") and that, as a plan participant, I was entitled to rights and protections afforded by ERISA.

9. During my tenure as Vice President of Human Resources, I never communicated with Bishop of Metuchen—or any other Bishop—about any business-related activity.

10. It was my understanding that CEO John Matuska managed SPMC during my tenure at SPMC. John Matuska ran the hospital on a day to day basis. John Matuska reported to the Board of Trustees.

11. I was not aware of any hotline of reporting violations of what Defendants refer to as "Ethical and Religious Directives for Catholic Health Care Services," or of any Catholic doctrine.

12. As Vice President of Human Resources, it was part of my job responsibilities to inform employees about policies governing their employment. I did not provide information to employees about "Ethical and Religious Directive," and I was not instructed to provide such information to employees. Nor was I aware of any policy requiring Saint Peter's employees to adhere to any Catholic doctrine.

13. As Vice President of Human Resources, it was part of my job responsibilities to oversee employee discipline for violation of any SPMC employment policy. During my tenure, no employee was ever disciplined or reprimanded for violation "Ethical and Religious Directives," or for violating Catholica doctrine.

14. It is my understanding that Defendants have submitted Declaration with their Motion to Dismiss representing that the Director of Pastoral Care was not Catholic.

15. It is my understanding that Defendants have submitted a Declaration with their Motion to Dismiss

representing that prayers are said at the beginning of certain meetings. However, during my tenure, I participated in regular executive meetings. These meetings began with reflective statements that frequently did not have a religious or sectarian character. Other staff meetings did not begin with any statement at all.

16. SPMC complied with ERISA throughout my tenure as Vice President of Human Resources. I never observed that compliance with ERISA in any way deterred or interfered with SPMC's ability provide medical services to patients or any other practice.

The foregoing is true to the best of my knowledge, information and belief.

Executed on September 19th, 2013, [Illegible].

/s/ Bruce Pardo
Bruce Pardo

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 3:13-cv-02941

LAURENCE KAPLAN, on behalf of himself, individually. and on behalf of all others similarly situated.

Plaintiff,

vs.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Electronically Filed

DECLARATION OF SUSAN RADOMSKY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

I, Susan Radomsky, declare under penalty of perjury:

1. I am competent to testify and make this Declaration based on my personal knowledge.

2. I submit this Declaration in support of Plaintiff's Opposition to Defendants' Motion to Dismiss the Complaint. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

3. I was employed by Saint Peter's Medical Center ("SPMC" or "Saint Peter's") for over five years, from May 1988 until December 1993. During my tenure at SPMC I held several positions, all of them in the Hospital's Human Resources Department. These positions included Human Resources Clerk, Benefit Assistant, Benefit Representative, Benefits Coordinator, and Senior Benefits Representative.

4. I am a vested participant in the Saint Peter's Healthcare System Retirement Plan ("the Plan").

5. When I began working at SPMC in 1988, I was given the Plan booklet which stated, among other things, that the Plan was insured by the Pension Benefit Guaranty Corporation and premiums were being paid for the coverage.

6. During my time at SPMC, the Plan was never considered to be a church plan. I cannot recall any discussions about the Plan being a church plan. To my knowledge, the Plan was always funded in accordance with ERISA, met ERISA reporting requirements and paid Pension Benefit Guarantee Corporation ("PBGC") premiums.

7. I first became aware of SPMC's claimed church plan status in January 2012 when I read an artricle online describing the supposed change in status.

8. During my tenure in the SPMC Human Resources Department, compliance with ERISA did not interfere with or deter SPMC's ability to provide health services to its patients or any other practice at SPMC.

9. As an employee in SPMC's Human Resources department, I was involved in explaining employee

benefits to SPMC employees, including the employee benefit portion of the orientation for new hires.

10. The Summary Annual Report ("SAR") was sent to SPMC employees every year, and the Summary Plan Description ("SPD") was sent out every five years. Both of these documents routinely represented that the Plan was covered by and compliant with ERISA.

11. At the time of their retirement SPMC employees were given copies of the SPD.

12. One of my duties in the Human Resources department was preparing annual check requests for Pension Benefit Guaranty Corporation premiums. I also delivered copies of the Department of Labor Form 5500s to the finance department and the office of John Matuska. These reporting forms were prepared by an outside accounting agency and were prepared specifically to comply with ERISA.

13. The issue of ERISA coverage became very important to SPMC employees in 1991, when the Mutual Benefit Life Insurance Company, which handled the 403(b) annuities of many SPMC employees, failed. Many SPMC employees were unable to access their annuities for a long period of time. As part of the fallout from Mutual Benefits Life Insurance's failure, many employees asked whether the Plan was protected. The Human Resources Department assured these employees that the Plan was insured by PBGC and covered by ERISA.

14. From my observations during my five years at SPMC, I do not believe that the Bishop of Metuchen—or any Bishop—was actively involved in the management of SPMC. Rather, it was my understanding that the hospital was operated by professional managers,

and the Bishop never became involved in management.

15. During my tenure at the hospital, I never interacted with any Bishop.

16. I was never told that I was required to adhere to any "Ethical and Religious Directives" or any Catholic doctrine as a condition of my employment with Saint Peter's.

17. I was not aware of any employee being reprimanded or disciplined for violating Catholic doctrine or the Ethical and Religious Directives ("ERDs").

18. I was not aware of any hotline allowing people to report violations of Catholic doctrine or the ERDs.

19. The only mission statement at the hospital was something called "Mission Excellence." Mission Excellence was a general statement encouraging employees to do their best in serving the hospital's patients. A true and correct copy of a November 24, 1992 Human Resources Department performance review memorandum for the position of Benefits Supervisor at SPMC, reflecting the principles of "Mission Excellence," is attached to this declaration as Exhibit A.

20. During my time in the Human Resources Department at SPMC, I did not hear daily prayers being read over the loudspeaker at the hospital.

21. I was not aware of there being a daily Mass held at the hospital.

22. Medical procedures connected with the termination of pregnancy were covered by the helath plan for hospital employees.

23. During my tenure at the hospital, the flexible spending accounts for employee medical expenses covered contraception for employees.

24. The only way that the Plan was ever represented to me and other hospital employees was as an ERISA covered plan. All participants were told by the hospital's administration that it was an ERISA covered plan.

25. I believe that Plan participants would be put at great risk without ERISA protections and PBGC insurance. Many of the Plan participants will only have Social Security benefits and their pensions from this Plan to see them through their retirement years. To lose their Plan benefits or have them reduced would be a severe hardship for those who have dedicated their careers to SPMC. A loss of Plan benefits would also be a direct contradiction of the representations made by Saint Peter's: that hospital employees would be taken care of in their retirements.

The foregoing is true to the best of my knowledge, information and belief.

Executed on September 18, 2013, in Harmony Township, New Jersey.

/s/ Susan Radomsky
Susan Radomsky

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 3:13-cv-02941

LAURENCE KAPLAN, on behalf of himself, individually. and on behalf of all others similarly situated.

Plaintiff,

vs.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

Electronically Filed

DECLARATION OF MONICA MOSLEY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

I, Monica Mosley, declare under penalty of perjury:

1. I am competent to testify and make this Declaration based on my personal knowledge.

2. I submit this Declaration in support of Plaintiff's Opposition to Defendants' Motion to Dismiss the Complaint. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

3. I was employed at the hospital ("Hospital" or "Saint Peter's") for sixteen years, from September

1988 until June 2003. From 1988 until 1998 or 1999, the Hospital was called Saint Peter's Medical Center ("SPMC"). After that, the Hospital was called Saint Peter's University Hospital ("SPUH"). During my tenure at the Hospital my job title was Billing Service Representative.

4. I am a vested participant in the Saint Peter's Healthcare System Retirement Plan ("the Plan").

5. When I began working at SPMC in 1988, I was given the Plan booklet which stated, among other things, that the Plan was insured by the Pension Benefit Guaranty Corporation and premiums were being paid for the coverage.

6. Throughout my employment at Saint Peter's, I was given a number of documents, including Summary Annual Reports and Summary Plan Descriptions representing the Plan as ERISA covered and laying out my rights under the law. A true and correct excerpt from one of these Summary Plan Descriptions is attached hereto as Exhibit A.

7. During my time at Saint Peter's, the Plan was never considered to be a church plan. There was no mention of the Plan being a church plan and I wasn't even aware of what a church plan was while I was working at Saint Peter's. To my knowledge, the Plan was always funded in accordance with ERISA, met ERISA reporting requirements and paid Pension Benefit Guarantee Corporation ("PBGC") premiums.

8. I first became aware of Saint Peter's claim that the Plan was exempt from ERISA as a purported "church plan" in November 2011 when I received a letter from the Plan administrators. A true and correct copy of this letter is attached hereto as Exhibit B.

9. From my observations during my sixteen years at Saint Peter's, I do not believe that the Bishop of Metuchen—or any Catholic Bishop—was involved in the management of Saint Peter's. Rather, it was my understanding that the hospital was operated by John Matuska and other professional managers.

10. During my tenure at the Hospital, I never interacted with the Bishop.

11. Being a Catholic was not a requirement for employment with Saint Peter's.

12. I was never told that I was required to adhere to Catholic doctrine as a condition of my employment with Saint Peter's.

13. I was not provided with, or otherwise made aware of, "Ethical and Religious Directives" ("ERDs").

14. I was not aware of any Hospital employee being reprimanded or disciplined for violating Catholic doctrine or the ERDs.

15. I was not aware of any hotline allowing people to report violations of Catholic doctrine or the ERDs.

16. The chapel at the Hospital was not used exclusively for Catholic ceremonies. I was aware of the chapel being used for ceremonies for other non-Catholic denominations.

17. It was my experience that Saint Peter's made a focused effort to accommodate and incorporate the religious beliefs of all denominations and faiths.

18. The only way that the Plan was ever represented to me and other hospital employees was as an ERISA covered plan. All participants were told by the hospital's administration that it was an ERISA covered plan.

19. I believe that I, like other Plan participants, would be put at great risk without ERISA protections and PBGC insurance. To lose our Plan benefits or have them reduced would be a severe hardship for those of us who have dedicated our careers to Saint Peter's.

20. Up until the time that I received the change of plan status letter in 2012, I never had any doubts about the stability or availability of my pension from Saint Peter's. I trusted that after sixteen years of hard work with the hospital, Saint Peter's would uphold its obligations and take care of me under the Plan.

21. Saint Peter's decision to go back on its promise to maintain the Plan as an ERISA plan is especially disappointing to me in light of the positive experience that I had working at the hospital for sixteen years. While I was working for Saint Peter's I loved my job and I felt like I gave them my all. I trusted Saint Peter's to hold up its end of the bargain.

22. To lose my Plan benefits or have them reduced would result in a severe hardship for me. When my husband passed away, I took a lump sum from a pension plan from another job I had before I retired. I used that lump sum payment to pay for my husband's burial. Currently, I use the money from Saint Peter's Plan to pay for my secondary insurance and without this money I would be unable to secure the insurance coverage I require.

The foregoing is true to the best of my knowledge, information and belief.

Executed on September 20, 2013 in Port St. Lucie.

/s/ Monica Mosley
Monica Mosley

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 3:13-cv-02941

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

DECLARATION OF LAURENCE KAPLAN IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I, Laurence Kaplan, declare under penalty of perjury:

1. I am competent to testify and make this Declaration based on my personal knowledge.

2. I submit this Declaration in support of Plaintiff's Opposition to Defendants' Motion to Dismiss the Complaint. I have personal, knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

3. I was employed at the hospital ("Hospital" or "Saint Peter's") from 1985 until 1999. From 1985 until sometime in 1998, the Hospital was called Saint Peter's Medical Center ("SPMC"). After that, the

Hospital was called Saint Peter's University Hospital ("SPUH").

4. I am a vested participant in the Saint Peter's Healthcare System Retirement Plan ("the Plan").

5. During my time as an employee of Saint Peter's, I was Manager of Food and Nutrition Services.

6. Before the year 2007, I regularly received summary plan descriptions, summary annual reports, and pension benefit statements from Saint Peter's. The year 2006 was the last year in which I received this information from Saint Peter's.

7. Based on my fourteen years of employment at Saint Peter's, I never became aware of any way in which operating the Plan under the Employee Retirement Income Security Act interfered with a religious practice at Saint Peter's.

The foregoing is true to the best of my knowledge, information and belief.

Executed on April 22, 2014, in Toms River, N. J.

/s/ Laurence Kaplan
Laurence Kaplan

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 3:13-cv-02941

LAURENCE KAPLAN, on behalf of himself, individually. and on behalf of all others similarly situated.

Plaintiff,

vs.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

DECLARATION OF JOHN MATUSKA IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I, John Matuska, declare under penalty of perjury:

1. I am competent to testify and make this Declaration based on my personal knowledge.

2. I submit this Declaration in support of Plaintiff's Motion for Partial Summary Judgment. 1 have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

3. I was employed at Saint Peter's from 1977 through 2001. I served as Chief Financial Officer and then Chief Operating Officer from 1977 to 1989 and Chief Executive Officer from 1989 to 2001.

4. I sat on the Saint Peter's Board of Trustees from 1977 to 2001. I also served on the Retirement Plan Committee from 1977 to 2001.

5. I am a vested participant in the Plan. I have been a participant in the Plan for thirty-seven years.

6. From at least 1977 until 2006, the Plan was operated as an ERISA-covered plan. As an ERISA-covered Plan, the Plan was fully funded in accordance with ERISA, met ERISA reporting requirements, and paid insurance premiums to the Pension Benefit Guaranty Corporation.

7. Saint Peter's regularly sent summary plan descriptions, summary annual reports, funding notices, and pension benefit statements to participants in the Plan as required by ERISA.

8. The Saint Peter's Retirement Plan was established, maintained and funded by Saint Peter's Healthcare System, which is a non-profit organization providing an array of health care services.

9. Funding for the Plan was generated by revenues from the provision of healthcare services.

10. Saint Peter's Healthcare System is not an organization whose principal purpose is the funding or administration of retirement plans.

11. The Plan was not established, maintained or funded by the Roman Catholic Diocese of Trenton or the Roman Catholic Diocese of Metuchen.

12. Based on my twenty-four years of employment as an executive of Saint Peter's, including 12 years as CEO and 24 years as a member of the Retirement Plan Committee, there is no way in which operating the Plan in compliance with ERISA interfered with any religious beliefs or practices of Saint Peter's.

The foregoing is true to the best of my knowledge, information and belief

Executed on April 27, 2014, in Mahwah, NJ.

/s/ John Matuska
John Matuska

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 3:13-cv-02941

LAURENCE KAPLAN, on behalf of himself, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

SAINT PETER'S HEALTHCARE SYSTEM, RONALD C. RAK, an individual, SUSAN BALLESTERO, an individual, GARRICK STOLDT, an individual, and JOHN and JANE DOES, each an individual, 1-20,

Defendants.

DECLARATION OF JOHN MATUSKA IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

I, John Matuska, declare under penalty of perjury:

1. I am competent to testify and make this Declaration based on my personal knowledge.

2. 1 submit this Declaration in support of Plaintiffs Motion for Partial Summary Judgment. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

3. I incorporate and reaffirm the statements made in my Declaration in Support of Plaintiff's Motion for Partial Summary Judgment, submitted on April 30, 2014, ECF No. 79.

4. I understand Defendants have submitted a declaration in which they claim that complying with ERISA would interfere with Saint Peter's Healthcare System's ("SPHS") ability to provide charitable care. During my twenty-four years of employment at SPHS, including twenty-four years as a member of the Retirement Plan Committee and twelve as CEO, complying with ERISA never interfered with SPHS's ability to provide charity care. SPHS always met the funding requirements of ERISA and had the resources to provide charity care.

5. Much of the charity care provided by Saint Peter's University Hospital ("SPUH") is provided through the emergency room. SPUH was legally required under the Emergency Medical Treatment and Labor Act to provide emergency care based upon the patient's need and regardless of ability to pay.

6. Similarly, during my tenure as a Member of the Retirement Plan Committee and as CEO, ERISA never required SPHS to invest Plan assets in funds that violated any Catholic religious teachings. SPHS was able to invest in funds that provided a prudent mix of investments without violating any Catholic religious principles.

7. The Bishop of Metuchen was not responsible for the day to day management of SPHS. SPUH was governed by a Board of Trustees, which was composed of community leaders and the President and CEO of SPUH.

8. During my employment at SPHS, SPHS did not receive funding from the Roman Catholic Church or the Diocese of Metuchen. Neither the Diocese nor the Church was a guarantor of any loan or financial product issued by SPHS. Neither the Diocese nor the

Church assumed financial liability for any of SPHS's financial obligations.

9. The foregoing is true to the best of my knowledge, information and belief.

Executed on June 30, 2014, Suffern, NY.

/s/ John Matuska
John Matuska